SENATE—*Friday, June 21, 1991*

(Legislative day of Tuesday, June 11, 1991)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable THOMAS A. DASCHLE, a Senator from the State of South Dakota.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

I exhort therefore, that, first of all, supplications, prayers, intercessions, and giving of thanks, be made for all men; For kings, and for all that are in authority; that we may lead a quiet and peaceable life in all godliness and honesty.—I Timothy 2:1–2.

Eternal God, perfect in truth, justice, and righteousness, there is no adequate way to express gratitude for our democracy, born more than 200 years ago out of the faith of our Founding Fathers who envisioned a sovereign people—a government of, by, and for the people. And as their records indicated, they took prayer seriously, which is why both Houses of Congress have opened with prayer from their very first day.

I pray for the people, that they may realize failure to exercise their sovereign responsibility will cause our democracy to fail as much as the failure of politicians, special interests, the press and media. Help them to take their citizenship seriously, to prepare for elections by knowing candidates and issues. Deliver them from "one issue politics," from cynicism and the excuses they give for apathy and neglect.

For God's sake and national renewal. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 21, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable THOMAS A. DASCHLE, a Senator from the State of South Dakota, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. DASCHLE thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time will be reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

EDUCATIONAL PROGRESS

Mr. COCHRAN. Mr. President, President Bush recently said:

There are only a few moments in life when we're called on to join a crusade, and this is one of them.

His remarks were made in a discussion of a recent study by the National Assessment of Educational Progress, which had revealed disappointing information in a nationwide assessment of the math skills of eighth grade students.

This report confirms that we have work to do and the time to act is now. I see the results of this report as a call to action—action to approve legislation that would implement the President's education strategy, America 2000.

One of the goals established by the Nation's Governors that form the basis for the new strategy calls for students in the United States to be first in the world in science and mathematics achievement by the year 2000. The education strategy includes the following objectives:

Math and science education will be strengthened throughout the system, especially in the early grades.

The number of teachers with substantive background in mathematics and science will increase by 50 percent.

The number of United States undergraduate and graduate students, especially women and minorities, who complete degrees in mathematics, science, and engineering will increase significantly.

The Federal components of the President's education proposals are currently pending before the Labor and Human Resources Committee, and I am hopeful that they will be adopted at the committee's executive session next week.

Mr. President, I ask unanimous consent that a summary of the "State of Mathematics Achievement" be printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

THE STATE OF MATHEMATICS ACHIEVEMENT: NAEP'S 1990 ASSESSMENT OF THE NATION AND THE TRIAL ASSESSMENT OF THE STATES NATIONAL CENTER FOR EDUCATION STATISTICS DATA SUMMARY

(By Emerson J. Elliott, Acting Commissioner of Education Statistics and Gary W. Phillips, Acting Associate Commissioner, Education Assessment)

BACKGROUND

When Congress reauthorized the National Assessment of Educational Progress (NAEP) in the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988, it continued assessments at the national level and, for the first time, called for assessment at the State level on a trial basis for 1990 and 1992. The national component of the 1990 assessment covered reading, mathematics and science at grades 4, 8 and 12 (and ages 9, 13 and 17). It included an expanded sample of private schools compared with previous years; an extra set of items measuring problem solving and estimation skills in mathematics; as well as background questionnaires from students (44 questions), teachers (69 questions), and principals (117 questions). The national sample in mathematics consisted of 1,300 private and public schools, and 26,000 students. At this time, only the mathematics assessment data are being released. The results for science and reading will be released later this year.

The State component of the 1990 assessment was limited to 8th grade mathematics as mandated by Congress, and for public schools only. Approximately 100 schools and 2500 students were sampled in each State.

There are several issues that need to be kept in mind in interpreting the 1990 NAEP data.

The 1990 Mathematics Assessment represents the beginning of a new mathematics trend line. There was no possibility of connecting the new trend line to the old one dating back to 1973 because the change in the content of the test was too substantial to justify such a connection.

The national averages in Part I and II of the composite report may be different because they are based on two different populations of students. In Part I, the national averages are based on a population of students tested from January-May, 1990 and include both public and private schools. As an illustration, the overall national average for public schools at grade 8 in Part I of the report was 264, whereas, in Part II it was 261. In Part II, the national average is based on a random half of the overall national sample and includes only public school students. This subsample was tested in January-February, 1990 (at the same time as the test administration of the Trial State Assessment).

The NAEP survey uses a representative sample of students and gathered data from

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

teachers of those students, not a representative sample of all teachers. Consequently, the reader can make generalizations about students but cannot make inferences about teachers. For example, we find that, for the nation, 45% of the students have male teachers. It cannot be inferred, however, that 45% of all teachers are male.

The mathematics teacher questionnaire was not administered at grade 12 because only about half of the 12th graders were in mathematics classes. Therefore, all information related to instructors at the 12th grade was obtained from the student and principal questionnaires.

PART I—NATIONAL RESULTS

Overall Findings

The overall mathematics achievement for each grade and level was as follows:

Grade	Average proficiency	Percentage of students at or above			
		Level 200	Level 250	Level 300	Level 350
4	216	72	11	0	0
8	265	98	67	14	0
12	295	100	91	46	5

The descriptions of the four levels of performance are as follows:

Level 200—Simple additive reasoning and problem solving with whole numbers.

Level 250—Simple multiplicative reasoning and beginning two-step problem solving.

Level 300—Reasoning and problem-solving involving fractions, decimals, precents, elementary geometric properties, and simple algebraic manipulations.

Level 350—Reasoning and problem-solving involving geometric relationships, algebraic equations, and beginning statistics and probability.

Some of the major findings in national data were that for all three grades:

Asian/Pacific Islander students exhibited the highest level of performance, followed by white, American Indian, Hispanic, and black students in descending order.

There were no differences in male and female performance in grades 4 and 8. However, in the 12th grade, males performed better than females.

Students attending schools in advantaged urban communities had the highest mathematics proficiency while those attending disadvantaged urban schools had the lowest.

Students in the Southeast tended to perform less well than those in the other regions.

Catholic and other private school students outperformed public-school students, although the difference was reduced by grade 12.

The better performing students had parents with some education beyond high school, access to a greater number of reading and resource materials at home, did more homework (at grades 8 and 12), missed less school, had both parents in the home, and watched less television.

The top one-third of schools had:

About one-third to half of the white and Asian/Pacific Islander students,

Nearly half of the students that had at least one parent who graduated from college,

Almost two-thirds to three-fourths of the students from advantaged urban communities, and

Almost half of the students from the Northeast and Central regions.

In contrast, at all three grade levels, the bottom one-third of schools had:

About two-thirds of the black students and nearly half of the Hispanic students,

Almost half of the students that had parents who did not finish high school,

Half to two-thirds of the students that were from disadvantaged urban communities, and

About half of the students from the Southeast region.

Similar subpopulation patterns were found for each of the six content areas: numbers and operations; estimation; measurement; geometry; data analysis; statistics and probability; and algebra and functions (see Chapter 3).

At grade 4, students' proficiency was lower in numbers and operations and estimation and highest in measurement. At grade 8, average proficiency was highest in numbers and operations and estimation. By grade 12, the students proficiency was similar across content areas.

Course Taking Patterns in the Mathematics Content Areas

There was a strong positive relationship between overall average mathematics proficiency and the amount of mathematics courses the student takes. This is true for the nation and for each subgroup.

Looking across the subgroups the most coursework was taken by Asian/Pacific Islanders, males, those living in advantaged urban areas, in the Northeast, attending private schools, and with parents who had graduated from college.

In grade 8, almost all students were enrolled in one of the three different types of courses—eighth-grade mathematics (58%), pre-algebra (22%), and algebra (16%).

By grade 12, most students had taken at least one algebra course (83%), very few students had taken advance algebra or pre-calculus (9%) or calculus (4%).

By grade 12, 28% of high school seniors had not taken a year of geometry, 55% had taken geometry but not trigonometry, and 17% had taken additional coursework in trigonometry.

By grade 12, only 12% of high school seniors had taken a semester of statistics.

Student Performance on Constructed Response Questions

About a fourth of the 1990 assessment required the student to respond to open-ended items rather than the multiple-choice format. In addition, in the national sample, a special research probe was conducted using constructed-response items to measure the students' problem solving abilities. The problem-solving items required students to resolve practical problems with multiple steps.

The general pattern of results for constructed response questions paralleled those for the multiple choice items. For example, data within each grade reflect patterns similar in gender and racial/ethnic group performance as generally were observed in the overall assessment.

Instructional Approaches

The policy of ability grouping was less prevalent in elementary school than in middle school as reported by teachers. Only 26% of 4th grade students were grouped by ability, whereas 66% of 8th grade students were grouped by ability.

Even though a considerable amount of research in both education and cognitive psychology has indicated a need for student centered, "hands-on" instructional approaches which place math problems in a real-world context (Lauren Resnick, *Education and Learning To Think*, Washington, DC, National Academy Press, 1987), textbooks and worksheets still comprised the primary instructional materials in school mathematics.

From 39–45% of the students across all three grades reported never working in small groups or with manipulatives and tools such as counting blocks, rulers or geometric shapes.

Only 30% of 8th and 12th graders reported doing some sort of written report or mathematics project.

NAEP data reveal that considerable testing is done in our schools. The percent of students reporting taking at least a weekly mathematics test for grades 4, 8 and 12 was 52%, 71% and 58%, respectively.

Only 13% of the fourth grade students and 19% of the eighth grade students were in classrooms where teachers reported receiving all the resources they needed.

Calculators and Computers

Because of the mathematical power provided by calculators and computers, almost all mathematics reforms recommend more use of both. NAEP data show that

Virtually every student or their family owns a calculator.

Teachers report using calculators more frequently with high ability students.

Calculator usage increases across grades. The percentage of students reporting use at least several times a week for grades 4, 8, and 12 was 9%, 30% and 58%, respectively.

Fewer students have access to computers in their mathematics classrooms. Only 34% of 4th graders and 21% of 8th graders have a computer available in the classroom.

Computer usage decreases across grades. In grade 4, 38% of students report that they use a computer at least once a week. The percentages for grades 8 and 12 are 16% and 20% respectively.

Opportunity To Learn

Many studies such as the Second International Mathematics (SIMS) have demonstrated that higher achievement is associated with a greater opportunity to learn mathematics. NAEP addressed the student's opportunity to learn by measuring the amount of overall mathematics instructional time provided to students, including homework, and teachers' reports about the topics emphasized in 4th and 8th grade classrooms.

Teachers of 4th and 8th graders reported spending 3–4 hours per week on mathematics instruction.

More than half of the students spent 15–30 minutes each day on mathematics homework.

Although teachers spent a fair amount of time on mathematics instruction, they gave students (especially low ability students) very little opportunity to learn knowledge and skills beyond arithmetic. The heaviest instructional emphasis (86%) in the 4th was on arithmetic number operations (Table 8.4/ p.191). Although 89% of the high ability 8th grade students received a heavy emphasis in algebra, 60% of the low ability 8th graders were provided a heavy emphasis on numbers and operations.

Very small proportions of students in any grade received heavy emphasis in measurement, geometry, or data analysis, statistics, and probability.

The major skill emphasized in the 4th grade was learning facts (91%). In the 8th grade, the emphasis shifted to learning procedures (68%). The development of mathematical reasoning and communication skills tended to be emphasized primarily in high ability groups.

Students' Perception of Mathematics

In general, the majority of students appeared to have positive perceptions of math-

ematics. Furthermore, there is a positive relationship between perception and mathematics proficiency.

Characteristics of Mathematics Teachers

The mathematics teaching workforce in the United States is very experienced. On average, the teachers of 4th and 8th grade students had 15–16 years of classroom experience and 14 years of experience teaching mathematics.

Almost two-thirds of the 4th and 8th graders were taught by teachers with the highest level of certification.

AMERICAN ENERGY INDEPENDENCE

Mr. JEFFORDS. Mr. President, I speak today to tell you that as we approach the Fourth of July, our national birthday celebration, America is in need of a new Declaration of Indepedence. This great Nation needs to state loudly and clearly once again that it is, and intends to remain, independent. I must say this because, sadly, this is not the direction in which we are moving

In the course of events of this Nation, of late, America is becoming dangerously dependent. And this goes radically against the principles upon which the Nation was founded. Those principles are of self-reliance and hard work, the essentials of independence.

Today America is becoming less independent as we become more and more reliant on foreign oil. Unless we act decisively, this Nation will apparently stay on that course which is, I declare, a course of national doom. At the very least, it must be stated that at our current rate, we will not achieve energy independence until sometime after all the oil wells of Earth run dry.

Obviously, this Nation founded to be governed for the good of the many is being steered by a policy that has in mind only the good of the few. I speak, of course, of the oil companies who reap great profits from our dependence on foreign oil and who even have the temerity to profit most in times of naitonal emergency.

Change is needed for, as I have said before, the future of an energy dependent America is severely limited while the future of an energy independent America knows no bounds.

The original Declaration of Independence cautioned that mankind is more disposed to suffer than to right themselves by abolishing the forms to which they are accustomed. "But when a long train of abuses and usurpation," as the original Declaration warns, presents themselves to the people, the people will act.

I tell you today that America is waking to the dangers, the frustrations, to the terrible costs, of energy dependence. Polls tell us that a huge majority of our citizens want energy independence and are willing now to pay extra for energy independence.

Americans do not want their future to be dependent on a 6,000-mile transfusion line subject to severance at any moment due to war or the whims of foreign powers. And add to the cost of the expensive oil that comes from that pipeline the untold billions on billions of dollars in military might, being spent now and earmarked for the years ahead, necessary to guarantee our supply of Mideast oil.

There is, there must be, another way. I have a way.

My program for American energy independence is something I call the Replacement and Alternative Fuels Act, or RAFA for short. I thank my colleagues, particularly those on the Energy Committee, for their consideration of that legislation, S. 716, and for their adoption of a portion of the bill. I also thank those who opposed the measure for the time they took in consideration. But I also wish to say that I am determined to go forward with this proposal.

I am determined to do what some say is impossible but what is, indeed, most possible, to set America on a course toward energy independence. One of the strongest indications of its possibility came in the American Petroleum Institute's reaction to my bill. When the oil companies trot out warnings of environmental boondoggle, economic disaster, logistical nightmare, you know you have hit on something they are taking seriously. To paraphrase Senator GORE, when the facts are not on your side, holler. That is hollering.

The oil companies will also tell you this is an ethanol bill, or a methanol bill. No apologies; it is. It is also a tar sands bill, an electric car bill, a hydrogen bill, a natural gas bill, an oil shale bill, and a coal bill, all sources of replacement or alternate fuels. And by the way, this is also a jobs bill, a deficit reduction bill, a balance of trade bill, and an environmental bill. It is also an OPEC bill, aimed squarely at the heart of those who would hold us hostage to oil.

So as the Fourth of July nears, I can think of no greater gift that we could give the American people than a new gift of freedom, a new Declaration of Independence, a commitment in law of our intent to break the bonds of energy dependence.

I might also add that 1991 is the bicentennial year for my home State of Vermont and the 200th anniversary of its motto which is freedom and unity. Vermonters know a lot about Independence, fought hard for it more than two centuries ago, and were an Independent republic for a time.

I also say today that as we move toward a new Declaration of Independence, we keep in mind the words "freedom and unity." This Nation deserves the new freedom that energy indpendence would give it, the freedom to realize its still vast potential. I know this Nation has the unity necessary to bring about that new freedom for reliable polls tell me 85 percent of Americans want energy independence.

That is a majority any Founding Fathers would be delighted to have behind them in setting off on any brave new venture, be it a new nation or a new declaration of a nation's intent, such as energy independence and the vast horizon of possibility that stretches bright and shining beyond it.

Mr. SYMMS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

UNITED STATES AID AND SOVIET REFORMS

Mr. SYMMS. Mr. President, it is easy to lose all sense of proportion and perspective when political changes come fast and furious. In the past few years we've seen the Berlin Wall come down and the merger of East and West Germany. We have seen the Soviets admit that their system does not work. We have seen reforms begin in China, only to be crushed with tanks. We have seen the slow death of the guerrilla movements in Central America as democracy has finally taken root. We have seen a major military victory for the United States in the Middle East.

The rate of these changes would seem to qualify for fast and furious. So maybe it is understandable that so many world leaders have lost their sense of perspective. I can find no other reasonable explanation for even suggesting that the Western democracies provide general economic aid to the Soviet Union at this time. The Soviets are spending about $20 billion a year on nuclear weapons aimed directly at us and another $20 billion on their overall strategic forces when measured in 1987 dollars. If they have this kind of money for nuclear warheads, they certainly do not need our help.

To add insult to injury, Mr. President, it was reported in the media yesterday—I have not been able to confirm this yet from official sources—but it is reported in the media that SS–20 missiles now are on the island of Cuba. Those were also bought and paid for by the Soviet dictators, and the Soviet empire. It is an outrage to think that the Soviet Union is spending this much money on a nuclear war machine with most of it aimed at the United States of America.

And when I refer to aid to the Soviets, I mean cash and loans needed to rebuild their economy. I do not mean we should deny the kinds of loan guarantees we recently provided to allow our farmers to compete with subsidized European farmers when selling to the Soviets.

Perhaps one reason so few people have questioned giving aid to the Soviets is that we have given aid to so many of our former enemies. But there is one big difference between giving aid to Poland and giving it to the Soviets—

the Poles are not building nuclear warheads targeted on our cities!

You would think one reason for providing aid is to help the Soviets through the tough time of reform. It is true the Soviet economy is in desperate trouble. It will take years of hard work and struggle before it recovers. The reforms needed to turn their economy around have hardly even started. I hope they succeed in adopting democratic reforms. I hope they learn the importance of private property, that it is the well-spring from which so much human progress derives. Maybe if they make these changes the people of Russia, Georgia, the Ukraine, and so forth, can avoid catastrophe.

But there is no guarantee these reforms will continue. There is no guarantee catastrophe is avertable. Providing aid at this time is, as the saying goes, just throwing good money after bad.

In fact, up until the publication of the study out of Harvard University's ivory tower, I had not heard anyone suggest that the amounts of western aid that have been discussed would really help. While the social scientists are perfectly willing to risk the taxpayer's money, the fact is even the amounts proposed are miniscule compared to the size of the problem.

The telling argument offered in support of aid to the Soviets rests on the need to provide President Gorbachev a lifeline. We need to provide Gorby an IV of financial juice to keep him in power, so the argument goes. Give him a fix so he can stay in power.

This tells us the United States and much of the Western World remains taken in by Gorbymania. Faddism is a fact of life, I know. And this might explain how Gorbachev could be given a Nobel Prize for Peace. But in matters of national preservation I would expect national leaders to rise above ephemeral spirits.

We are so captured by the man that it seems Gorbachev himself is conducting much of our foreign policy. We watch his every step as though he alone can shephard the Soviet Union through the difficult transition from Communist dictatorship to some form of democratic-capitalist system. And so we gear our policies toward whether it would inconvenience President Gorbachev.

Gorbachev, being a master politician, has recognized how susceptible western thinking is to fears he might not survive, let alone succeed. And so he has taken to the international campaign trail trying to build up his case: Give me money or who knows what you will face.

I have heard of many forms of extortion, but few match the sheer audacity of that practiced by President Gorbachev. Give me money to keep building weapons pointed back at you so I can keep the military in check and, not incidentally, stay in power myself.

It is an open question whether President Gorbachev can survive in power. I can certainly understand the interest in some quarters to prop this man up. It is a matter of preferring the devil you know, choosing the path of least immediate resistance. But with the economy of the Soviet Union in shambles, it is hard to see how anyone could do much worse relative to United States interests.

And given our outstanding successes in the past of propping up failed dictators, I can certainly see why we need to use U.S. tax dollars.

When you look at the list of the people that we have been involved in, it is a long and distinguished list. You wonder why we cannot learn from the past. There are certain fundamental economic principles that must be involved in reforms of private property—a sound currency, a convertible ruble. Those things are fundamental if the Soviet Union is going to be successful.

No one can say whether the economic reforms in the Soviet Union can save that country from absolute and total collapse. I do not think many people in this country understand the magnitude of the task.

Part of the task of reforming the Soviet economy is fixing its monetary system. There are enormous pent-up demands for goods. And I understand there is a large overhang of currency in the Soviet economy. Prof. Steve Hanke, professor of economics at Johns Hopkins University, recently published an article in the June 5, 1991, edition of the Wall Street Journal, in which he describes how the use of a currency board could form the basis on one solution to the Soviet's monetary problems. I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, June 5, 1991]

SOVIETS NEED HONEST MONEY, NOT AID

(By Steven H. Hanke)

Mikhail Gorbachev hopes to attend the London meeting of the seven major industrial nations this month in order to plead his case for Western economic aid. Earlier this month, the Soviet Union's prime minister, Valentin Pavlov, explained that one of the major reasons for that aid is to prevent a complete collapse of the ruble.

Since the Soviet government canceled its 50- and 100-ruble notes earlier this year, individual Soviets have had no confidence in the ruble. To protect their wealth from overnight expropriation, Soviets substitute zelyonenki (greenbacks) for rubles. That substitution is very costly for the Soviet Union. Individual Soviets probably hold about $10 billion in foreign currency, or about $30 per person. To obtain those little bits of paper, which are produced by Western central banks at virtually no cost, Soviets must exchange real goods and services. The flight from the ruble generates a perverse form of foreign aid that flows from the Soviet Union to the West.

To reverse that aid flow, the Soviet Union must install a monetary system that is sound, well understood and simple to operate. A currency board system would meet these requirements.

More than 60 countries (mainly former British colonies) have had currency boards. So long as they kept their boards, all of those countries successfully maintained convertibility at a fixed exchange rate.

Under a currency board system, there is no central bank. Instead, the currency board issues notes and coins. These are convertible into a foreign reserve currency at a fixed rate and on demand. As reserves, the board holds high-quality, interest-bearing securities denominated in the reserve currency. Its reserves are equal to 100 percent, or slightly more, of its notes and coins in circulation, as set by law. A currency board does not accept deposits and it generates income from the difference between the interest paid on the securities it holds and the expense of maintaining its note and coin circulation. It has no discretionary monetary policy. Instead, market forces alone determine the money supply.

As long as they used the currency board system, Britain's colonies enjoyed the same relatively low inflation rates as did the metropolitan center they were linked to by their reserve currency; branch banks from the metropolitan centers were prominent; residents had access to capital at competitive rates; indigenous firms, often with correspondent arrangements in the metropolitan centers, developed to intermediate between local savers and investors; and relative prices were roughly in line with those on world markets.

With independence and as an expression of nationalism, most currency boards were replaced by central banks. In consequence, the quality of their domestic currencies deteriorated sharply. However, currency boards still exist in Hong Kong, Singapore and Brunei, where they continue to operate with great success.

There is even an historical precedent in Russia for a currency board. After the Bolshevik revolution, when troops from Britain and other allied nations invaded northern Russia, the currency was in chaos. The Russian civil war had begun, and every party to the conflict was issuing its own near-worthless money. There were more than 2,000 separate issuers of flat rubles. Trade was difficult because few people would accept flat rubles in exchange for goods and services.

To facilitate trade, the British established a National Emission Caisse for northern Russia in 1918. The caisse issued "British ruble" notes. They were backed by pounds sterling and convertible into pounds at a fixed rate. British Foreign Office archives reveal that the father of the British ruble was none other than John Maynard Keynes, who was a British Treasury official at the time.

Despite the civil war, the British ruble was a great success. The currency never deviated from its fixed exchange rate with the British pound. In contrast to other Russian rubles, the British ruble was a reliable store of value. Naturally, the British ruble drove other rubles out of circulation. Unfortunately, the British ruble's life was brief: The National Emission Caisse ceased operations in 1920, after allied troops withdrew from Russia.

To establish a convertible ruble, the Soviets should heed Paul Volcker's warning delivered last summer to a gathering of central bankers in Jackson Hole, Wyoming: Markets developed long before central banks appeared; in fact, central banks could be one Western institution that might actually retard the transition to markets.

So the Soviets should abolish Gosbank and replace it with a currency board. The best way to begin would be to freeze the existing supply of ruble notes and coins. Then the ruble should be allowed to float against other currencies for a specified period, so that its free market exchange rates could be observed. With the information gained during the period of floating, the authorities should fix the ruble to the foreign reserve currency at an exchange rate that makes Soviet exports competitive, and pledge to exchange the new ruble for the reserve currency at that rate.

The most logical reserve currency for the new board would be the U.S. dollar since that is the preferred currency in the Soviet Union. To obtain the dollar reserves necessary for the currency board, the Soviet government could begin by converting its official stock of gold and foreign currency reserves into dollars. That would generate about $20 billion. The Soviets could raise at least another $20 billion through standby facilities with Western governments, the International Monetary fund, the European Bank for Reconstruction and Development and other multinational organizations.

To assist in establishing credibility and to assure Soviet citizens that the currency board's asssets were safe, the board should be incorporated and based in a safe-haven country, such as Switzerland. The majority of the board's directors should be foreign nationals, designated by private institutions in their home countries.

The Soviet Union would have a convertible currency within months. The British introduced a convertible ruble just 11 weeks after Keynes proposed it.

If the government in Moscow fails to repair the ruble, the Soviet republics will follow through on their threats to fill the void by issuing their own currencies. Republics that install currency boards will have the same experience as the north Russian government: Their rubles will quickly drive Soviet rubles out of circulation, further humiliating and discrediting Moscow.

Mr. SYMMS. Mr. President, I want to quote the very important part of this column.

Since the Soviet government canceled its 50- and 100-ruble notes earlier this year, individual Soviets have had no confidence in the ruble. To protect their wealth from overnight expropriation, Soviets substitute zelyonenki (greenbacks) for rubles. That substitution is very costly for the Soviet Union. Individual Soviets probably hold about $10 billion in foreign currency, or about $30 per person. To obtain those little bits of paper, which are produced by Western central banks at virtually no cost, Soviets must exchange real goods and services. The flight from the ruble generates a perverse form of foreign aid that flows from the Soviet Union to the West.

That have convertible currencies—

To reverse that aid flow, the Soviet Union must install a monetary system that is sound, well understood and simple to operate.

I urge my colleagues to read this, because we must recognize that until the Soviet Union gets convertible currency, there is no way economic reforms can take place. Otherwise, it is a perverse form of foreign aid, with the Russian people, trading hard goods to get hard currency. Actually, it is a perverse form of foreign aid, because all the central banks have to do is print these little pices of paper for virtually no cost, and it is paid for in dear terms by the Russian people.

The needs of those people trapped in the Soviet Union are enormous. We have needs also. We have an infrastructure that needs repair and rebuilding, and a health system that threatens to take over our economy. We have a drug problem and a crime problem in this country. Even with the demands on our own resources, the tremendous suffering faced by the people in the Soviet republics compels moral people to want to help.

I could almost agree to providing extensive humanitarian aid. I might well be able to see my way to providing some limited economic aid. But I will never agree to providing aid as long as the Soviet military buildup continues.

Mr. President, if they have the resources to build these weapons, they do not need our aid. It is that simple. I know some of the supporters of aid for the Soviets would like to argue that it is not so simple. They will argue that Gorbachev cannot continue with his reforms without the support of the military, and that only through bribing the generals with more missiles, can he be assured of that support. This may be true, but it also may not be true.

Taking that argument to its illogical conclusion, why do we not just build the weapons for them? After all, we know how much better our equipment is, and we can surely produce it more efficiently than they can. Why do we not just build the weapons and give them to the Soviet generals, pretargeted on United States cities? I do not think the people would go along with that. That should give the Soviet generals—at least assure them—that they had weapons that would work.

That sound crazy, and it is, Mr. President. That is about what we are going to do, if we give the Soviet Union aid. They are building nuclear missiles that are aimed at the United States of America. As I said earlier, we find reports—I will attempt to get those reports confirmed as soon as possible—in the media that there are now SS–20 missiles in Cuba. Whether they are nuclear tipped SS–20 missiles or nonnuclear, I do not know.

This is not just old-fashioned Commie bashing, Mr. President. The threat of world communism is fading. It has failed; it is over. The world realizes communism is a bankrupt, morally broken system. The military capability of the Soviet war machine does live on. We cannot overlook that.

The American taxpayer still pays very dearly for the weapons that we have and the upgrades of the old ones to face the continued military threat. It just does not make sense for the United States of America to subsidize a Soviet nuclear machine, even as the American taxpayer has to bear the burden of a nuclear defense. There is just no rational, logical explanation why we should do it. The late Ayn Rand, the famous author, called this activity pathologically irrational.

There will come a day when United States aid to individual republics of what is now the Soviet Union will be appropriate. I look forward to that day when we can start making straight deals directly with those republics, when we see this empire crumble. But that day is not today. Two conditions must be met:

First, the Soviets must stop building nuclear weapons. If they have any money to build nuclear weapons, they do not need help from the American taxpayer. The Soviet reforms must be far enough along so that the American taxpayer knows that his money and her money is not being thrown down a rathole. We are a long way from meeting either of those conditions today.

I say again, when I talk about throwing the money down a rathole, if, in fact, the Soviet Union does not adopt private property reform so that the people can actually own and hold private property in that country and if, in fact, they refuse to make the ruble convertible to the other currencies of the world and stand behind it, if they fail to do that, Mr. President, there is no way that we will not be throwing money down a rathole.

And during this process, as there has been some more openness through glasnost in the Soviet Union, as the people go out and acquire the greenbacks and the deutschmarks, the British pounds, the French francs, and other currencies, by barter and trade with goods of their labor and their sweat, blood, and tears, it is a perverse form of foreign aid from the backs of the Russian people out to the West, because all we have to do is run the printing presses and print some more greenbacks at a very low cost, while they pay a very dear price for them.

We must, I think, insist upon this. It would be foolish for us to think we can ever bribe the Soviet generals. What we need to do is see more of what Mr. Yeltsin spoke of when he was here this week, and that is a conversion—as Secretary Baker talked about—of the Soviet military plants to produce consumer goods for the Russian people.

Mr. President, I think my time has expired. I thank the chair for his indulgence. I see no other Senators on the floor. So I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. PELL). Without objection, it is so ordered.

GOVERNMENT-TO-GOVERNMENT RELATIONSHIP OF THE UNITED STATES WITH INDIAN TRIBAL GOVERNMENTS

Mr. INOUYE. Mr. President, Senator MCCAIN and I are most pleased to be able to share with our colleagues, a recent policy statement of the President of the United States reaffirming the government-to-government relationship of the United States with Indian tribal governments.

Mr. President, on April 15 and 16 of this year, the leaders of tribal governments from across Indian country met in the Senate in the seventh of a series of regional and national tribal leaders forums held over the past year in an effort to develop a national Indian agenda. During the course of the national forum, tribal government leaders shared their concerns and their priorities with officials from the various Federal agencies responsible for the administration of Federal Indian programs.

The national forum culminated in a meeting with the President of the United States, in which tribal leaders called upon the President to reaffirm the policy of Indian self-determination first articulated by President Nixon in the early 1970's and to reaffirm the government-to-government relationship between the United States and the Indian nations. The tribal leaders also requested that the President designate a senior staff member in the White House to serve as a liaison with Indian tribal governments.

The President's statement, issued on June 14, 1991, is responsive to the petition of the leaders of tribal governments in every respect, and we applaud his leadership.

After a century of fluctuating Federal policies that ranged from wars against the Indian tribes, followed by a policy of removal from their traditional lands to reservations in the Western States, and later a policy of termination of Federal relations with the Indian tribes and forced assimilation of Indian people, tribal governments and their citizens across Indian country will undoubtedly greet the President's message with considerable enthusiasm and relief.

We are grateful to the President for recognizing and reaffirming the governmental status of the nations that represent this country's first Americans. In so doing, the President has sent a signal to the nations of the world, that this country will honor and respect its native peoples. We commend the President for his firm commitment to an enlightened policy.

We ask that the President's statement and the briefing paper to the President be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE
OFFICE OF THE PRESS SECRETARY,
Los Angeles, CA, June 14, 1991.

STATEMENT BY THE PRESIDENT REAFFIRMING THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP BETWEEN THE FEDERAL GOVERNMENT AND TRIBAL GOVERNMENTS

On January 24, 1983, the Reagan-Bush Administration issued a statement on Indian policy recognizing and reaffirming a government-to-government relationship between Indian tribes and the Federal Government. This relationship is the cornerstone of the Bush-Quayle Administration's policy of fostering tribal self-government and self-determination.

This government-to-government relationship is the result of sovereign and independent tribal governments being incorporated into the fabric of our Nation, of Indian tribes becoming what our courts have come to refer to as quasi-sovereign domestic dependent nations. Over the years the relationship has flourished, grown, and evolved into a vibrant partnership in which over 500 tribal governments stand shoulder to shoulder with the other governmental units that form our Republic.

This is now a relationship in which tribal governments may choose to assume the administration of numerous Federal programs pursuant to the 1975 Indian Self-Determination and Education Assistance Act.

This is a partnership in which an Office of Self-Governance has been established in the Department of the Interior and given the responsibility of working with tribes to craft creative ways of transferring decision-making powers over tribal government functions from the Department to tribal governments.

An Office of American Indian Trust will be established in the Department of the Interior and given the responsibility of overseeing the trust responsibility of the Department and of insuring that no Departmental action will be taken that will adversely affect or destroy those physical assets that the Federal Government holds in trust for the tribes.

I take pride in acknowledging and reaffirming the existence and durability of our unique government-to-government relationship.

Within the White House I have designated a senior staff member, my Director of Intergovernmental Affairs, as my personal liaison with all Indian tribes. While it is not possible for a President or his small staff to deal directly with the multiplicity of issues and problems presented by each of the 510 tribal entities in the Nation now recognized by and dealing with the Department of the Interior, the White House will continue to interact with Indian tribes on an intergovernmental basis.

The concepts of forced termination and excessive dependency on the Federal Government must now be relegated, once and for all, to the history books. Today we move forward toward a permanent relationship of understanding and trust, a relationship in which the tribes of the nation sit in positions of dependent sovereignty along with the other governments that compose the family that is America.

BRIEFING PAPER TO PRESIDENT BUSH FROM THE NATIONAL INDIAN TRIBAL LEADERS FORUM

We very much appreciate this historic opportunity to meet with you today and to discuss the relationship between the United States and tribal governments.

CRITICAL ISSUES IN FEDERAL INDIAN POLICY

Tribal Sovereignty and the Government-to-Government Relationship: Indian tribes, along with the United States and the states, are one of three sources of sovereignty within the United States of America. Tribal governments have exercised sovereignty since time immemorial. Two centuries of treaties, executive action, legislation, and supreme court opinions have recognized tribes as sovereigns. Today, tribes enact laws, administer them, and adjudicate disputes in tribal courts. Every president from Nixon to Reagan has issued a formal statement recognizing the government-to-government relationship between the United States and Indian tribes.

Trust Relationship and Federal Expenditures: The United States has a well-established special trust obligation to American Indians. When treaties were negotiated, the United States promised Indian tribes that the federal government would meet the special needs of Indian people. Today, special federal programs for education, health, housing, and economic development remain seriously underfunded and are inadequate to address pressing needs in Indian country.

Culture and Religion: The vibrant and diverse cultures and religions of Indian people are flourishing: Our traditions—including our reverence for the land and the extended family—are the indispensable underpinning for tribal policy.

Sustainable Homelands: Our ultimate goal is that our reservations will be prosperous, self-sustaining, permanent homelands in which strong and creative tribal governments preserve the old ways and adopt new ones, including the tools of modern technology, when consistent with our traditions and our love and respect for the land.

REQUESTS RELATING TO THIS MEETING

We respectfully request that the President take the following preliminary actions in order to further the goal of fulfilling the special government-to-government relationship between the federal government and American Indian tribes:

1. The President should issue a formal statement acknowledging and supporting the government-to-government relationship between the United States and Indian tribes;

2. The President should designate a senior staff member in the White House to serve as liaison with Indian tribes; and

3. The designated liaison person within the White House should promptly begin discussions with Indian leaders on the issue of how best to institutionalize, within the White House, a mechanism for carrying out the government-to-government relationship.

SIGNATORIES

We sign this statement on behalf of 200 Indian leaders meeting in Washington, DC in Room 216 of the Senate Hart Office Building at a National Indian Tribal Leaders Forum conducted from April 15 through April 17, 1991:

Delbert Frank, President, Affiliated Tribes of N.W. Indians; Jacob Viarrial, Governor, Pojoaque Peublo; Wilma Mankiller, Principal Chief, Cherokee Nation of Oklahoma; Russell Hawkins, Chairman, Sisseton-Wahpeton Sioux Tribe; Eddie L. Tullis, Chairman, Poarch Creek Indian Reservation; Phillip Martin, Chief, Mississippi Band of Choctaw Inds.; Larry Nuckolls, Governor, Absentee-Shawnee Tr. of Oklahoma; Elbridge Coochise, President, Nat'l Amer. Ind. Ct Judges Assoc.; Jerry G. Haney, Chief, Seminole Nation of Oklahoma.

Edward K. Thomas, President, Tlingit & Haida Tribes of Alaska; Peterson Zah,

President, Navajo Tribe; Nora Garcia, Chairperson, Ft. Mohave Indian Reservation; Lionel Bordeaux, President, Sinte Gleska College; Wayne Ducheneaux, President, Nat'l Congress of Am. Indians; Earl Old Person, Chief and Chairman, Blackfeet Indian Reservation; Glen Miller, Chairman, Menominee Indian Reservation; and Oren Lyons, Chief, Onondaga Nation, Iroquois Confederation.

Dated: April 17, 1991.

HAPPY 50TH ANNIVERSARY RALPH AND GOLDIE LEWIS

Mr. SEYMOUR. Mr. President, on June 23, Ralph and Goldie Lewis will celebrate their 50th wedding anniversary. It is said that success is not a destination, but a journey. At this milepost in their journey through life, however, it is only fitting that we pause to salute the success Ralph and Goldie have enjoyed so far.

In 35 years in business, Ralph and Goldie have built Lewis Homes into one of the Nation's top homebuilding firms. Regularly, their firm is listed among the Nation's top 10 builders by Professional Builder magazine.

Lewis Homes is a family-owned business. Ralph and Goldie's four sons, Richard, Robert, Randall, and Roger, are all active in the business.

The Lewis family is a fine example of those who have journeyed to California in search of the California dream. Together, the family has taken advantage of California's education and economic opportunities and built a life that has not only been good to them, but also has helped countless others seeking homes for their own families.

I ask the Senate to join me and the Lewis family today in extending our best wishes to Ralph and Goldie as they celebrate 50 golden years together.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1991—S. 1106

Mr. KENNEDY. Mr. President, I am delighted to strongly support S. 1106, the Individuals With Disabilities Education Act Amendments of 1991. Through this bill, early intervention service will be reauthorized, and existing services and programs will be enhanced.

Originally, part H of Public Law 99–457 allowed States 3 years to plan and adopt policies for the development and implementation of services to infants and toddlers with disabilities. States were required to have the system in place and provide some early intervention services. The implementation of all early intervention services to all eligible infants and toddlers and their families was to have taken place by the fifth year.

Many States are now reaching their fourth and fifth years, but may have to stop providing early intervention services due to the current fiscal crisis. This reauthorization recognizes the severe fiscal realities facing so many States across the country. Rather than dropping these States from the program, this bill says such States will have an additional 2 years to meet the fifth year requirements, while States that are able to meet their requirements now will receive a reward for doing so. Instead of penalizing the most hard-pressed States, their children and their families, we are lending an extra hand to a few and commending others for a job well done.

Another important aspect of this reauthorization is the increasing role which families play in effective early intervention. Families of children with special needs face many more obstacles than other families. They must work with doctors from numerous areas of medicine, teachers, therapists, and service coordinators. All of these professionals will offer advice to the families as to what to do, often contradicting each other, leaving families bewildered. This bill will allow parents, themselves, to become the family's and child's service coordinator, previously called "case manager" in Public Law 99–457. Thus, families may elect not to use the service coordinator services available under part H.

In addition, under this bill parents can decide what services their child needs without jeopardizing other services the family and child are receiving. Families were once led through the maze by professionals, but now they are leading themselves and other families through a comprehensive early intervention system. We are enabling and empowering families.

States have discretion to decide whether to serve children who are "at-risk for developing developmental delays." Through the differential funding provision, States such as Massachusetts will be able to continue programs that will identify these children and refer them to the appropriate programs. States that have developed these programs should be commended for choosing this avenue of promoting early intervention.

Other provisions of this bill ensure that children with disabilities attending Department of Defense schools abroad and schools in this country which serve military bases will benefit from the same rights as children with disabilities covered by Public Law 94–142 and Public Law 99–457. This bill ensures that children with special needs who are military dependents receive the same services as other children. The bill protects all American children between birth and age 5, inclusive.

Our commitment to early intervention for infants and toddlers with developmental disabilities deserves to be continued. Early intervention is working. It is enabling these children to develop to their maximum potential.

We know that children begin to learn from birth and continue to develop throughout their lives. Failure to use early intervention for children with disabilities wastes valuable time and opportunity. Early intervention also substantially reduces later educational and other costs to society. By giving children with disabilities a chance to develop their skills, we enable them to become productive citizens, at great benefit to the Nation. For all these reasons, this legislation deserves prompt action, and I urge the Senate to approve it.

STEVENS SUBSTITUTE AMENDMENT TO S. 218

Mr. STEVENS. Mr. President, radio spectrum is one of the most important natural resources controlled by the Federal Government. Spectrum is not tangible—we can't perceive it directly—but it affects our daily lives in a profound way. The early morning television news programs we watch at home; the nationwide telephone system we access in our offices; the mobile communications used by police, ambulances, and firemen; and many other important services are all spectrum based.

The electromagnetic spectrum, which includes the radio spectrum, consists of bands of different wavelengths of waves created by the oscillation of electric charges moving at the speed of light. The frequency of the oscillation of these waves is used to determine the various bands of spectrum. Short wavelengths like x rays have frequencies on the order of 10 to the 21st power, while longer wavelengths like AM radio have frequencies on the order of 10 to the 3d power. The frequency of oscillation is measured in terms of hertz—named for the 19th-century German Physicist Heinrich Hertz.

Radio and TV are broadcast over the longer wavelengths of the electromagnetic spectrum. For example, AM radio ranges from 540 to 1600 kilohertz and FM radio from 88 to 108 megahertz, while TV is broadcast over slightly higher frequencies. Newer technologies are using frequencies that range up to 6 gigahertz. However, even the highest frequencies used for over-the-air transmissions are still longer than the frequencies over which visible light is transmitted.

Mr. President, the demand for radio spectrum—both for expansion of existing services and for introduction of new services—has risen dramatically over the past decade. We now face a potential spectrum shortage that could sap the creativity and vitality of the American telecommunications industry, which currently leads the world. We can't create more radio spectrum. To deal with a potential shortage, we

must make our current spectrum use more efficient and develop underutilized portions of the spectrum.

My good friend, the senior Senator from Hawaii, who chairs the Commerce Committee's Communications Subcommittee, is taking the lead in addressing the spectrum shortfall. His bill, S. 218, would establish a national spectrum planning process to ensure that we are anticipating future spectrum needs and taking the steps necessary to provide for them. S. 218 would also take the unprecedented step of directing the Federal Government, one of the largest spectrum users, to identify at least 200 megahertz of federally assigned frequencies that are excess to Federal needs. These frequencies would then be reallocated to non-Federal uses by the Federal Communications Commission [FCC].

Mr. President, I support Senator INOUYE'S effort. These frequencies can be reallocated to non-Federal uses without compromising the effectiveness of Federal programs. At the same time, I think that the Senator should, as part of this reallocation, address another serious problem—the deterioration of the spectrum assignment process.

The FCC has a two-step process for distributing spectrum. The first step is the allocation of a specific band of frequencies to a particular purpose. For example, the radio spectrum between 88 megahertz and 108 megahertz is allocated to FM radio service.

Once an allocation to a particular purpose has been made, the FCC assigns individual frequencies within that allocation to specific individual licensees. Currently, the FCC uses comparative hearings or lotteries to assign frequencies. The comparative hearing process is expensive and time consuming, and is generally used for assignment of frequency licenses that have a public interest component, for example television and radio licenses.

Lotteries were authorized by Congress to assist the FCC in dealing with the ever increasing number of applications for frequencies with primarily commercial uses. Unfortunately, lotteries, particularly in the cellular telephone service, often produced outrageous multimillion dollar windfalls for speculators. Typically, a speculator would apply with the hope of winning the lottery but no real desire to provide the service. If the speculator won the lottery, he would, as soon as possible, sell the spectrum license for a hefty bonus to a third party with a genuine desire to provide the service.

These windfalls have attached so many additional applicants to lotteries that the FCC recently has to suspend taking applications for the 220 megahertz band when the rush of applications—in excess of 100,000 over a matter of days—threatened to overwhelm the Commission's processing capacity.

Mr. President, the time has come for Congress to consider a new spectrum assignment procedure. That procedure should: First, reduce the cost—in time and money—of spectrum assignment by discouraging frivolous or speculative applications; second, increase the efficiency and effectiveness of the assignment process by granting the spectrum license in the first instance to the applicant with the greatest desire to provide the service; third, encourage the efficient use of spectrum by licensees; and fourth, fairly compensate Federal taxpayers for use of a scarce public natural resource.

In many cases, competitive bidding fills the bill. It is not appropriate for every spectrum assignment, but in cases like cellular telephone service, it could vastly improve the assignment process for bona fide applicants, Federal taxpayers, and most importantly, the general public.

The amendment I intend to propose at the proper time to Senator INOUYE'S bill would authorize the FCC to implement a limited competitive bid process for assignment. It would exempt license renewals and modifications and several categories of telecommunications services where competitive bidding would not be appropriate. It would require the FCC to ensure that needs of rural America are not slighted in a competitive bidding system. It would give the FCC the flexibility to devise competitive bidding procedures that would encourage the development of new telecommunications services and ensure that all bona fide parties are able to participate in the competitive bidding process.

Mr. President, it's also important to note what my competitive bidding amendment would not do.

First, it would not change the FCC's exiting spectrum allocation procedures. The FCC would continue to consider a broad range of public interest and technical factors in determining to what use a particular block of spectrum would be allocated.

Second, it would not expand, in any way, the rights granted a licensee. Licenses would still be issued for a limited term subject to the jurisdiction of the FCC. No one would be buying a property right in the spectrum.

Mr. President, in a sense, competitive bidding for spectrum licenses already exists. In the postlottery market, licenses change hands for money every day. The only problem is that the beneficiaries are lottery speculators—not the consumers who depend on spectrum-based services or the general public that ultimately owns the spectrum. It's time that Congress moved to change this sorry state of affairs.

I ask unanimous consent, Mr. President, that my amendment and a section-by-section analysis of my amendment be printed in the RECORD in their entirety.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMENDMENT TO S. 218

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emerging Telecommunications Technologies Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

(1) radio spectrum is a valuable public natural resource;

(2) it is in the national interest that this resource be used more efficiently;

(3) the spectrum below 6 gigahertz is becoming increasingly congested;

(4) scarcity of assignable radio frequencies can and will—

(A) impede the development and distribution of new spectrum-based products and services,

(B) reduce the capacity and efficiency of the United States telecommunications system, and

(C) adversely affect the productive capacity and international competitiveness of the United States economy;

(5) more efficient use of the spectrum can provide the resources to expand the range of telecommunications services offered to the public, increase national economic output, and otherwise further the public interest;

(6) many United States Government functions and responsibilities depend heavily on the use of the spectrum, involve unique spectrum applications, and are performed in the broad national and public interest;

(7) the United States Government should be given explicit authority to identify government frequencies excess to its needs and make such frequencies available to meet non-United States Government needs;

(8) current spectrum assignment procedures—specifically comparative hearings and lotteries—often are expensive and time-consuming, can strain the limited resources of the Federal Communications Commission, and can result in an inefficient distribution of spectrum and an unjustified windfall to speculators;

(9) competitive bidding for spectrum in many instances can yield significant benefits for the United States by reducing the cost in time and money—and increasing the efficiency—of spectrum assignment, discouraging purely speculative applications, encouraging the efficient use of spectrum by licensees, and fairly compensating United States taxpayers for use of a scarce public natural resource;

(10) competitive bidding should be structured to—

(A) enable all parties with a bona fide interest to participate in the assignment process;

(B) facilitate introduction of new spectrum-based technologies and entry of new companies into the telecommunications market;

(C) give appropriate consideration to the special needs of certain spectrum users such as government public safety agencies, rural common carriers, marine and aviation licensees, and others; and

(D) otherwise further the general public interest;

(11) competitive bidding should not—

(A) alter existing spectrum allocation procedures;

(B) disrupt the operations of existing spectrum licensees; or

(C) expand, in any way, the rights granted a licensee in the current spectrum assignment process; and

(12) the President of the United States, the Secretary of Commerce, and the Federal Communications Commission should be directed to foster more efficient use of spectrum through more intensive spectrum planning; the reallocation of at least 200 megahertz of spectrum from United States Government use to non-United States Government use; and the implementation of competitive bidding procedures for some new spectrum assignments.

SEC. 3. NATIONAL SPECTRUM PLANNING.

(a) PLANNING ACTIVITIES.—The Secretary and the Chairman of the Commission shall, at least twice each year, conduct joint spectrum planning meetings with respect to the following issues—

(1) future spectrum needs for all uses (including government public safety operations and rural telecommunications services);

(2) spectrum allocation actions necessary to meet those needs; and

(3) actions necessary to promote the efficient use of the spectrum in meeting those needs, taking into account, among other factors—

(A) technological innovations and marketplace developments affecting the relative efficiencies of different portions of the spectrum;

(B) proven spectrum management techniques to promote increased shared use of the spectrum as a means of increasing non-United States Government access; and

(C) potential incentives for spectrum users to develop innovative technologies, products, and services and that more efficiently and effectively utilize the spectrum.

(b) REPORTS.—The Secretary and the Chairman of the Commission shall submit a joint annual report to the President, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate on the joint spectrum planning meetings conducted pursuant to subsection (a) and any recommendations for action developed in such meetings.

(c) OPEN PROCESS.—The Secretary and the Chairman of the Commission will conduct an open process under this section to provide any interested entity (including any private, public, commercial, and governmental interest) a reasonable opportunity to present and exchange its views and to ensure full consideration of those views.

SEC. 4. IDENTIFICATION OF REALLOCABLE FREQUENCIES.

(a) IDENTIFICATION REQUIRED.—In accordance with the provisions of this section, the Secretary, in consultation with United States Government spectrum users, shall identify bands of frequencies that—

(1) are allocated on a primary basis for United States Government use and eligible for licensing pursuant to section 305(a) of the Communications Act (47 U.S.C. 305(a));

(2) are not required for the present or identifiable future needs of the United States Government;

(3) can feasibly be made available during the fifteen years after the date of enactment of this Act for use under the provisions of the Communications Act for non-United States Government uses;

(4) can be reallocated to non-United States Government uses without imposing costs on the United States Government that are excessive in relation to the benefits that may be obtained from such uses; and

(5) are likely to have significant value for non-United States Government uses under the Communications Act.

(b) AMOUNT OF SPECTRUM RECOMMENDED.—

(1) IN GENERAL.—In accordance with the provisions of this section, the Secretary shall recommend for reallocation for use by non-United States Government stations bands of frequencies totalling at least 200 megahertz that are located below 6 gigahertz and meet the criteria set forth in subsection (a).

(2) MIXED USES PERMITTED TO BE COUNTED.—Bands of frequencies which the Secretary recommends be partially retained for use by United States Government stations, but which are also recommended to be reallocated and made available under the Communications Act for use by non-United States Government stations, may be counted toward the minimum 200 megahertz of spectrum required by paragraph (1), except that—

(A) the bands of frequenceis counted under this paragraph may not count toward more than one-half of the minimum 200 megahertz required by paragraph (1);

(B) a band of frequencies may not be counted under this paragraph unless the assignments of such band to United States Government stations under section 305 of the Communications Act (47 U.S.C. 305) are limited by geographic area, by time, or by some other means that guarantees that the potential use to be made by such United States Government stations is substantially less (as measured by geographic area, time, or some other reasonable standard) than the potential non-United States Government use to be made; and

(C) the operational sharing permitted under this paragraph shall be subject to procedures established and implemented by the Commission and the Department of Commerce to prevent harmful interference.

(c) CRITERIA FOR IDENTIFICATION.—

(1) NEEDS OF THE UNITED STATES GOVERNMENT.—In determining whether a frequency band meets the criterion specified in subsection (a)(2), the Secretary shall—

(A) consider whether such band is used to provide a communications service that is or could be available from a commercial provider;

(B) seek to promote—

(i) the maximum practicable reliance on commercially available substitutes,

(ii) the sharing of frequencies (as permitted under subsection (b)(2)),

(iii) the development and use of new communications technologies, and

(iv) the use of non-radiating communications systems where practicable; and

(C) seek to avoid—

(i) serious degradation of United States Government services and operations,

(ii) excessive costs to the United States Government and civilian users of such Government services, and

(iii) identification of a band that is likely to be subject to substitution for the reasons specified in subparagraphs (A) through (C) of section 5(b)(2).

(2) FEASIBILITY OF USE.—In determining whether a frequency band meets the criterion specified in subsection (a)(3), the Secretary shall—

(A) assume such band will be assigned by the Commission under section 303 of the Communications Act (47 U.S.C. 303) during the fifteen years following the date of enactment of this Act,

(B) assume reasonable rates of scientific progress and growth of demand for telecommunications services,

(C) determine the extent to which reallocation of such band will relieve actual or potential scarcity of frequencies available for non-United States Government use,

(D) seek to include frequencies that can be used to stimulate the development of new technologies, and

(E) consider the cost to reestablish United States Government services displaced by the reallocation of such bank over the fifteen year period.

(3) COSTS TO THE UNITED STATES GOVERNMENT AND PUBLIC BENEFITS.—In determining whether a frequency band meets the criterion specified in subsection (a)(4), the Secretary shall consider—

(A) the costs to the United States Government of relocating its services in order to make such band available for non-United States Government use, including the incremental costs directly attributable to the loss of the use of such band; and

(B) the benefits that could be obtained from reallocating such band to non-United States Government uses, including the value of such band in promoting—

(i) the delivery of improved service to the public,

(ii) the introduction of new services, and

(iii) the development of new communications technologies.

(4) NON-UNITED STATES GOVERNMENT USE.—In determining whether a frequency band meets the criterion specified in subsection (a)(5), the Secretary shall consider—

(A) the extent to which equipment is commercially available that is capable of utilizing such band, and

(B) the proximity of frequencies that are already assigned for non-United States Government use.

(5) OTHER USES.—

(A) INAPPLICABILITY OF CRITERIA.—Notwithstanding any other provision of this Act, no criterion set forth in subsection (a) shall be deemed to be met with regard to any frequency assigned to, or used by, a Federal power agency for the purpose of withdrawing that assignment under this Act.

(B) MIXED USE ELIGIBILITY.—The frequencies assigned to any Federal power agency may be eligible for mixed use under subsection (b)(2) only in geographically separate areas. In those cases where a frequency is to be shared by an affected Federal power agency and a non-Federal user, non-Federal use shall not be permitted if such use would cause harmful interference to the affected Federal power agency or adversely affect the reliability of its power system.

(C) DEFINITION.—For the purposes of this paragraph, the term "federal power agency" means the Tennessee Valley Authority, the Bonneville Power Administration, the Western Area Power Administration, or the Southwestern Power Administration.

(d) PROCEDURE FOR IDENTIFICATION OF REALLOCABLE BANDS OF FREQUENCIES.—

(1) SUBMISSION OF REPORTS TO THE PRESIDENT TO IDENTIFY 45 MEGAHERTZ TO BE MADE AVAILABLE IMMEDIATELY FOR REALLOCATION AND TO PROVIDE PRELIMINARY AND FINAL REPORTS ON ADDITIONAL FREQUENCIES TO BE REALLOCATED.—(A) Within six months after the date of the enactment of this Act, the Secretary shall prepare and submit to the President a report that specifically identifies and recommends for immediate reallocation 45 megahertz of spectrum meeting the criteria set forth in subsection (a).

(B) Within twelve months after the date of the enactment of this Act, the Secretary shall prepare and submit to the President a preliminary report that tentatively identifies and recommends for reallocation bands of frequencies meeting the criteria set forth in subsection (a).

(C) Within twenty-four months after the date of enactment of this Act, the Secretary shall prepare and submit to the President a final report that specifically identifies and recommends for reallocation at least 155 additional megahertz of spectrum meeting the criteria set forth in subsection (a).

(D) The President shall immediately notify the Congress of the receipt of the reports required by this paragraph and publish the reports in the Federal Register.

(2) CONVENING OF PRIVATE SECTOR ADVISORY COMMITTEE.—Not later than twelve months after the enactment of this Act, the Secretary shall convene a private sector advisory committee to—

(A) review the bands of frequencies identified in the preliminary report required by paragraph (1)(B);

(B) advise the Secretary with respect to—

(i) the bands of frequencies which should be included in the final report required by paragraph (1)(C), and

(ii) the effective dates which should be established under subsection (e) with respect to such bands;

(C) receive public comment on the Secretary's preliminary and final reports; and

(D) prepare and submit the report required by paragraph (4)

The private sector advisory committee shall meet at least quarterly until each of the actions required by section 5(a) have taken place.

(3) COMPOSITION OF COMMITTEE; CHAIRMAN.—The private sector advisory committee shall include—

(A) the Chairman of the Commission and the Secretary (or their designated representatives), representative of the Department of Defense, a representative of the Department of Transportation, and one other representative from a United States Government department or agency (excluding the Departments of Commerce, Defense, or Transportation or any agency within those departments) designated by the Secretary;

(B) Persons (other than employees of the United States Government) who shall be designated by the Secretary and shall be representative of—

(i) manufacturers of spectrum-dependent telecommunications equipment,

(ii) commercial and non-commercial users of the spectrum (including, but not limited to, rural common carriers, radio and television broadcast licensees, State and local public safety agencies, and the aviation and maritime industries), and

(iii) Other interested members of the public who are knowledgeable about the uses of the spectrum.

A majority of the members of the committee shall be members designated pursuant to subparagraph (B), and one of such members shall be designated as chairman by the Secretary.

(4) RECOMMENDATIONS ON SPECTRUM ALLOCATION PROCEDURES.—The private sector advisory committee shall, not later than twenty-four months after its formation, submit to the Secretary; the Commission; the Committee on Energy and Commerce of the House of Representatives; and the Committee on Commerce, Science, and Transportation of the Senate recommendations for the reform of the process of allocating spectrum between United States Government users and non-United States Government users, and any dissenting views thereon.

(e) TIMETABLE FOR WITHDRAWAL AND LIMITATION.—The Secretary shall, as part of the final report required by subsection (d)(1)(C), include a timetable for the effective dates by which the President shall, within fifteen years after the date of enactment of this Act, withdraw or limit assignments on frequencies specified in the report. The recommended effective dates shall—

(1) permit the earliest possibe reallocation of such frequencies in light of the requirements of section 6(a);

(2) take into account the useful remaining life of equipment that has been purchased or contracted for to operate on such frequencies;

(3) make provision for the need to coordinate frequency use with other nations; and

(4) minimize the imposition of incremental costs on the United States Government directly attributable to the loss of the use of such frequencies or the changing to different frequencies that are excessive in relation to the benefits that may be obtained from non-United States Government uses of such frequencies.

SEC. 5. WITHDRAWAL OR LIMITATION OF ASSIGNMENT TO U.S. GOVERNMENT STATIONS.

(a) IN GENERAL.—The President shall, subject to further authorization in an Appropriations Act—

(1) within three months after receipt of the report required by section 4(d)(1)(A), withdraw or limit the assignment to a United States Government station of any frequency in the 45 megahertz recommended for immediate reallocation;

(2) by the effective dates recommended pursuant to section 4(e) (except as provided in subsection (b)(4)), withdraw or limit the assignment to a United States Government station of any frequency recommended for reallocation by the report required by section 4(d)(1)(c);

(3) assign or reassign other frequencies to United States Government stations as necessary to adjust to withdrawal or limitation of assignments pursuant to paragraphs (1) and (2); and

(4) publish in the Federal Register a notice and description of the actions taken under this subsection.

(b) SUBSTITUTIONS.—

(1) AUTHORITY TO SUBSTITUTE.—Notwithstanding the provisions of subsection (a), if the President determines that a circumstance described in paragraphs (2) or (4) exists, the President may, within one month after receipt of the report required by section 4(d)(1)(A), and within six months after receipt of the report required by section 4(d)(1)(C), substitute an alternative frequency or band of frquencies for the frequency or band that is subject to such determination and withdraw or limit the assignment of that alternative frequency or band pursuant to subsection (a). The President shall publish in the Federal Register a statement of the reasons for taking any such action.

(2) SUBSTANTIVE GROUNDS FOR SUBSTITUTION.—(a) The recommended frequency reallocation would seriously jeopardize the national security interests of the United States;

(B) the frequency recommended for reallocation is uniquely suited to meeting important United States Government needs;

(C) the recommended frequency reallocation would seriously jeopardize public health or safety; or

(D) the recommended frequency reallocation would result in incremental costs to the United States Government that are excessive in relation to the benefits that may be obtained from non-United States Government uses of the reallocated frequency.

(3) CRITERIA FOR SUBSTITUTED FREQUENCIES.—For purposes of paragraph (1), a frequency may not be substituted for a frequency identified by the report required by section 4(d)(1)(C) unless the frequency proposed as a substitute also meets each of the criteria set forth in section 4(a).

(4) DELAYS IN IMPLEMENTATION.—If the President determines that any action cannot be completed by the effective date recommended pursuant to section 4(e) or that such action on such date would result in a frequency's not being used as a consequence of the Commission's distribution plan prepared pursuant to section 6, the President may—

(A) withdraw or limit the assignment to United States Government stations on a later date that is consistent with such distribution plan by providing notice to that effect in the Federal Register, including the reason that withdrawal or limitation at a later date is required; or

(B) substitute alternative frequencies pursuant to paragraphs (1) and (3).

(c) COSTS OF WITHDRAWING FREQUENCIES ASSIGNED TO THE UNITED STATES GOVERNMENT.—(1) Any United States Government licensee, or non-United States Government entity operating on behalf of a United States Government licensee, that is displaced from a frequency pursuant to this section may be reimbursed, from revenues received pursuant to section 8, not more than the incremental costs it incurs (in such amounts as provided in advance in an Appropriations Act) that are directly attributable to the displacement from the frequency. The estimates of these costs shall be prepared by the affected agency, in consultation with the Department of Commerce.

(2) There are authorized to be appropriated to the affected licensee agencies such sums as may be necessary to carry out the purposes of this subsection.

SEC. 6. DISTRIBUTION OF FREQUENCIES BY THE COMMISSION.

(a) PLANS SUBMITTED.—(1) With respect to the 45 megahertz of spectrum made available for reallocation pursuant to section 5(a)(1), the Commission, subject to further authorization in an Appropriations Act, shall, not later than twenty-four months after the date of enactment of this Act, complete a public notice and comment proceeding regarding the allocation of such spectrum and shall prepare a plan to assign such spectrum. Assignments of the 45 megahertz shall be made pursuant to the competitive bidding process authorized by section 8 during fiscal years 1994 through 1996, except that the Commission may, after conducting public notice and comment proceedings, waive this requirement on a case by case basis if it determines that a waiver is necessary to further a fundamental policy objective of the Communications Act.

(2) With respect to the spectrum made available for reallocation pursuant to section 5(a)(2), the Commission, subject to further authorization in an Appropriations Act, shall, not later than forty-eight months after the date of enactment of this Act, complete a public notice and comment proceeding and, after consultation with the Secretary, prepare and submit to the President and the Congress a plan for the distribution under the Communications Act of such spectrum. Such plan shall—

(A) taking into account the timetable recommended by the Secretary pursuant to Section 4(e), propose—

(i) the gradual distribution of the frequencies remaining, after making the res-

ervation required by clause (ii), over the course of a ten-year period beginning on the date of submission of such plan; and

(ii) reserve a significant portion of such frequencies for distribution beginning after the end of such ten-year period;

(B) contain appropriate provisions to ensure—

(i) the availability of frequencies for new technologies and services in accordance with the policies of section 7 of the Communications Act (47 U.S.C. 157); and

(ii) the availability of frequencies to stimulate the development of such technologies and services; and

(C) not prevent the Commission from allocating bands of frequencies for specific uses in future rulemaking proceedings.

(b) AMENDMENT TO THE COMMUNICATIONS ACT.—Section 303 of the Communications Act (47 U.S.C. 303) is amended by adding at the end thereof the following new subsection:

"(u) Have authority to assign the frequencies reallocated from United States Government use to non-United States Government use pursuant to the Emerging Telecommunications Technologies Act of 1991: *Provided*, that any such assignment shall be made expressly subject to the right of the President to reclaim such frequencies under the provisions of Section 7 of the Emerging Telecommunications Technologies Act of 1991.".

SEC. 7. AUTHORITY TO RECLAIM FREQUENCIES.

(a) AUTHORITY OF PRESIDENT.—Notwithstanding any other provision of law, the President may, in accordance with this section, reclaim any frequency withdrawn or limited pursuant to section 5(a) for reassignment to United States Government stations if the President determines that—

(1) such frequency is needed to further the national security interests of the United States or meet important public health or safety needs, or

(2) such frequency is uniquely suited to meeting other important United States Government needs.

(b) PROCEDURE FOR RECLAIMING FREQUENCIES.—In reclaiming a frequency, the President shall—

(A) establish a timetable to effect an orderly transition for a displaced licensee (if such frequency has been assigned) to obtain a new frequency and equipment necessary for its utilization;

(B) provide an estimate of the cost of displacing such licensee (if such frequency has been assigned); and

(C) to the maximum extent possible, replace the reclaimed frequency through the substitution procedures established by section 5(b).

(c) COSTS OF RECLAIMING FREQUENCIES.—Any non-United States Government licensee displaced from a frequency pursuant to this section shall, subject to the enactment of appropriations, be reimbursed, from revenue received pursuant to section 8, the incremental costs it incurs that are directly attributable to the loss of the use of the frequency. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subsection.

(d) EFFECT ON OTHER LAW.—Nothing in this section shall be construed to limit or otherwise affect the authority of the President under section 706 of the Communications Act (47 U.S.C. 606).

SEC. 8. COMPETITIVE BIDDING.

(a) COMPETITIVE BIDDING AUTHORIZED.—Subject to further authorization in an Appropriations Act, section 309 of the Communications Act (47 U.S.C. 309) is amended by adding at the end thereof the following new subsection:

"(j)(1) Subject to the exclusions and conditions listed in paragraph (2), the Commission shall have authority to use competitive bidding to award initial licenses or new construction permits, including licenses and permits for spectrum reallocated for non-United States government use pursuant to the Emerging Telecommunications Technologies Act of 1991.

"(A) The Commission shall require potential bidders to file a first-stage application indicating an intent to participate in the competitive bidding process and containing such other information as the Commission finds necessary. After conducting the bidding, the Commission shall require the winning bidder to submit a second-stage application. Upon determining that such application is acceptable for filing and that the applicant is qualified pursuant to subparagraph (B), the Commission shall grant a permit or license.

"(B) No construction permit or license shall be granted to an applicant selected pursuant to subparagraph (A) unless the Commission determines that such applicant is qualified pursuant to section 308(b) and subsection (a) of this section, on the basis of the information contained in the first-and-second-stage applications submitted under subparagraph (A).

"(C) Each participant in the competitive bidding process is subject to the schedule of charges contained in section 8.

"(D) The Commission shall have the authority in awarding construction permits or licenses under competitive bidding procedures to (i) define the geographic and frequency limitations and technical requirements, if any, of such permits or licenses, in accordance with public interest, convenience, or necessity; (ii) establish minimum acceptable competitive bids; and (iii) establish other appropriate conditions on such permits and licenses that will serve the public interest.

"(E) The Commission shall, within eighteen months after the date of enactment of the Emerging Telecommunications Technologies Act of 1991 following public notice and comment proceedings, adopt rules establishing competitive bidding procedures under this subsection, including the method of bidding (such as sealed bids) and the basis for payment (such as lump-sum or installment payments, fixed or variable royalties, combinations of lump-sum payments and royalties, or other reasonable forms of payment).

"(2)(A) Competitive bidding shall not apply to:

"(i) license renewals and modifications;

"(ii) the United States Government and State or local government entities;

"(iii) amateur operator services, over-the-air terrestrial radio and television broadcast services, public safety services, and radio astronomy services;

"(iv) private radio end-user licenses, such as Specialized Mobile Radio Service (SMRS), maritime, and aeronautical end-user licenses;

"(v) any license grant to a non-United States Government licensee being moved from its current frequency assignment to a different one by the Commission in order to implement the goals and objectives underlying the Emerging Telecommunications Technologies Act of 1991; and

"(vi) any other service, class of services, or assignments that the Commission determines, after conducting public comment and notice proceedings, should be exempt from competitive bidding because of public interest factors warranting an exemption to the extent the Commission determines the use of competitive bidding would jeopardize appropriate treatment of those factors.

"(B) In implementing this subsection, the Commission shall ensure that current and future rural telecommunications needs are met and that existing rural telecommunications licensees and their subscribers are not adversely affected.

"(3) Monies received from competitive bidding pursuant to this subsection shall be deposited in the general fund of the United States Treasury.".

(b) RANDOM SELECTION NOT TO APPLY WHEN COMPETITIVE BIDDING IS USED.—Section 309(i)(1) of the Communications Act (47 U.S.C. 309) is amended by deleting the period after the word "selection" and inserting in lieu thereof: ", except in instances where competitive bidding procedures are to be utilized pursuant to subsection (j).".

SEC. 9. DEFINITIONS.

As used in this Act:

(1) The term "Act" means the Emerging Telecommunications Technologies Act of 1991.

(2) The term "Communications Act" means the Communications act of 1934, as amended (47 U.S.C. 151 et seq.).

(3) The term "allocation" means an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunication services.

(4) The term "assignment" means an authorization given by the Commission or the United States Government for a radio station to use a radio frequency or radio frequency channel.

(5) The term "Secretary" means the Secretary of Commerce.

(6) The term "Commission" means the Federal Communications Commission.

STEVENS SPECTRUM AMENDMENT TO S. 218—SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TITLE

This section specifies the short title of the Act—the "Emerging Telecommunications Technologies Act of 1991".

SECTION 2—FINDINGS

This section contains twelve findings concerning the allocation and assignment of the radio spectrum. Among other things, the following points are made:

Radio spectrum is a valuable public resource that should be used more efficiently;

The increasing scarcity of available spectrum will hurt the United States economy;

The U.S. government should do more intensive spectrum planning and should identify and make available for reallocation to non-government use at least 200 megahertz of government frequencies that are excess to its need;

Current spectrum assignment procedures often are expensive and time-consuming and can result in an unjustified windfall to speculators;

Competitive bidding in many instances would reduce the cost and increase the efficiency of spectrum assignment and would fairly compensate taxpayers for the use of a scarce public resource;

Competitive bidding should be structured to facilitate the introduction of new spectrum-based services and give appropriate consideration to the special needs of certain spectrum users such as public safety agencies and rural common carriers; and

Competitive bidding should not alter existing spectrum allocation procedures, disrupt

the operation of existing spectrum licensees, or expand, in any way, the rights granted a licensee.

SECTION 3—NATIONAL SPECTRUM PLANNING

The Secretary of Commerce (Secretary) and the Chairman of the Federal Communications Commission (FCC) are required to conduct joint spectrum planning meetings at least twice each year. These meetings shall consider future spectrum needs for all uses and the actions necessary to meet those needs in an efficient manner. The resuts of these meetings must be reported annually to the President and the Congress.

SECTION 4—IDENTIFICATION OF REALLOCABLE FREQUENCIES

The Secretary, in consultation with other U.S. government users, is required to identify bands of frequencies that: (1) are currently allocated on a primary basis to the U.S. government and are eligible for licensing by the FCC: (2) are not required for present or identifiable future needs of the U.S. government; (3) can feasibly be made available for non-U.S. government use over the next 15 years; (4) can be reallocated to non-U.S. government uses without imposing costs on the U.S. government that are excessive in relation to the benefits from those uses; and (5) are likely to have significant value for non-government uses. The last 4 criteria are explained in detail later in the section.

At least 200 megahertz below six gigahertz must be identified. Up to 100 megahertz of the 200 megahertz may be partially retained by the U.S. government, but only if U.S. government use is substantially less than non-U.S. government use. Frequencies assigned to Federal power agencies may not be withdrawn pusuant to this process.

The Secretary is required to submit a report identifying 45 megahertz for immediate reallocation within six months after the date of enactment and a report identifying at least an additional 155 megahertz for long-term reallocation within two years after the date of enactment. In the final 155 megahertz report, the Secretary shall include a timetable for withdrawing and limiting the frequencies recommended for reallocation. The President shall notify the Congress of the receipt of each report and publish the reports in the Federal Register.

Within one year of the date of enactment the Secretary is required to convene a private sector advisory committee to review the spectrum tentatively identified for the 155 megahertz report. The advisory committee shall be composed of the Secretary; the Chairman of the FCC; representatives of the Departments of Defense and Transportation and one other government department or agency; and representatives of manufacturers of spectrum-dependent equipment; commercial and non-commercial users of the spectrum (including public safety agencies and rural common carriers); and other interested members of the public. The advisory committee shall submit to the President and the Congress a report on recommendations for reforming the current process for allocating spectrum between U.S. government and non-U.S. government users.

SECTION 5—WITHDRAWAL OR LIMITATION OF ASSIGNMENT

The President shall limit or withdraw frequencies in the 45 megahertz recommended for immediate reallocation within three months of receipt of the Secretary's report and shall limit or withdraw frequencies in the 155 megahertz recommended for long-term reallocation by the dates recommended by the Secretary. Notice of actions taken under this section shall be published in the Federal Register.

Alternative frequencies may be substituted for frequencies recommended for reallocation if the President determines that the recommended frequency would: seriously jeopardize the national security interests of the United States; affect a frequency uniquely suited to an important U.S. government need; seriously jeopardize public health or safety; or result in costs that are excessive to the U.S. government in relation to the benefits obtained from the use of that frequency by non-government users. The substituted frequency must meet the criteria set forth in section 4. The President may also delay implementation of a withdrawal or limitation for cause. Appropriations are authorized to cover incremental costs incurred by any U.S. government licensee that are directly attributable to being displaced from a frequency.

SECTION 6—DISTRIBUTION OF FREQUENCIES BY THE COMMISSION

The Secretary is required to complete a public notice and comment proceeding within two years after the date of enactment regarding reallocation of the 45 megahertz, and prepare a plan for the assignment of that spectrum. The 45 megahertz shall be assigned pursuant to the competitive bid process authorized in section 8 during fiscal years 1994 through 1996, except where the FCC determines, after notice and comment on a case-by-case basis, that it is necessary to waive the competitive bid process in order to further a fundamental policy of the Communications Act.

Within four years of the date of enactment the FCC shall, after a public notice and comment proceeding and in consultation with the Secretary, submit to the President a plan for the distribution of the 155 megahertz identified for long-term reallocation. The plan shall reserve a significant portion of the frequencies identified for reallocation for distribution not earlier than 10 years after the date the plan is submitted and shall include appropriate provisions to ensure the availability of frequencies for new technologies and services.

Section 303 of the Communications Act is amended by adding a new subsection which provides that the FCC shall have the authority to assign frequencies reallocated under this Act and reserves the right of the President to reclaim those frequencies in accordance with section 7 of this Act.

SECTION 7—AUTHORITY TO RECLAIM FREQUENCIES

The President is authorized to reclaim any frequency reallocated under this Act if the President determines that such frequency is: needed to further the national security interests of the United States; needed to meet important health or safety needs; or is uniquely suited to other important U.S. government needs.

The President shall establish a timetable to effect the orderly transition of any displaced licensee to a new frequency, provide an estimate of the cost of displacing such licensee, and to the maximum extent possible, replace the reclaimed frequency through the substitution procedures established in section 5.

The U.S. Government shall, subject to enactment of appropriations, reimburse any non-U.S. government licensee displaced under this section for incremental costs incurred as a direct result of the displacement. Nothing in this section may be construed as limiting the wartime authority of the President under section 706 of the Communications Act.

SECTION 8—COMPETITIVE BIDDING

Section 309 of the Communications Act is amended by adding a new subsection to authorize the FCC to use competitive bidding to award initial licensees or new construction permits.

Potential bidders would be required to file first-stage applications. The winner of the competitive bid process would be required to file a second-stage application. Only if the FCC determines that the winner met the requirements of section 308(b) and 309(a) of the Communications Act would an initial license or construction permit be granted. Winners would be subject to the schedule of fees under section 8 of the Communications Act, and the FCC would have full authority under the new subsection to restrict the license, establish minimum bids, and establish other requirements in the public interest.

Within eighteen months of the date of enactment the FCC shall, after public notice and comment proceedings, adopt rules for competitive bidding under the new subsection. The rules shall include the method of bidding and the basis for payment, which may include lump-sum or installment payments, fixed or variable royalties, or some other reasonable form of payment.

Competitive bidding shall not apply to: license renewals and modifications; U.S., state, or local government entities; amateur operator, over-the-air terrestrial radio and television broadcast, public safety, and radio astronomy services; private radio end-user licenses; and license grant to a non-U.S. government licensee being moved from a current frequency to a new frequency as a result of this Act; and any other service, class of service, or assignment that the FCC determines, after public notice and comment, is in the public interest to exempt from competitive bidding.

In implementing competitive bidding, the FCC shall ensure that current and future rural telecommunications needs are met and that existing rural telecommunications licensees and their subscribers are not adversely affected.

Monies received from competitive bidding shall be deposited in the general fund of the United States Treasury.

SECTION 9—DEFINITIONS

This section defines the terms "Act," "Communications Act," "allocation," "assignment," "Secretary," and "Commission" for the purposes of this Act.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business closed.

VIOLENT CRIME CONTROL ACT

The PRESIDING OFFICER. The Senate will now resume consideration of S. 1241, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1241) to control and reduce violent crime.

The Senate resumed consideration of the bill.

AMENDMENT NO. 368

(Purpose: To codify the "good faith" exception to the exclusionary rule)

Mr. THURMOND. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. THURMOND] proposes an amendment numbered 368.

Mr. THURMOND. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

Strike section 2301 and insert in lieu thereof the following.

SEC. . ADMISSIBILITY OF CERTAIN EVIDENCE.

(a) IN GENERAL.—Chapter 223 of title 18, United States Code, is amended by adding at the end the following:

"§ 3509. Admissibility of evidence obtained by search or seizure

"(a) EVIDENCE OBTAINED BY OBJECTIVELY REASONABLE SEARCH OR SEIZURE.—

"(1) FEDERAL PROCEEDINGS.—Evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment. The fact that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of the existence of such circumstances.

"(2) STATE PROCEEDINGS.—The law of the United States does not require the exclusion of evidence in a proceeding in any court under circumstances in which the evidence would be admissible in a proceeding in a court of the United States pursuant to paragraph (1) of this subsection.

The PRESIDING OFFICER. The time for debate on this amendment is limited to 2 hours, evenly divided.

Mr. THURMOND. Mr. President, today, I rise to offer an amendment which codifies an exception to the exclusionary rule that has been recognized by the Supreme Court. This amendment will assist law enforcement in its effort to combat violent and drug-related crime. It is taken from title III of President Bush's crime bill and it is similar to a bill, S. 151, which I introduced on the first day of this Congress. Furthermore, it is similar to a measure that overwhelmingly passed the Senate by a vote of 63 to 24 on February 7, 1984. The House overwhelmingly passed a similar amendment last year as an amendment to the 1990 crime bill.

The exclusionary rule is a judicially created remedy for violations by law enforcement officers of the fourth amendment's prohibition against illegal searches and seizures. More simply, if evidence is obtained by a law enforcement officer in violation of the fourth amendment then that evidence will be excluded in a criminal trial.

Since the creation of the exclusionary rule remedy in 1914, in Weeks versus California, the Supreme Court has recognized exceptions when the exclusionary rule should not apply. This measure codifies one of those exceptions created by the Court in the case of United States versus Leon. This case provided that evidence obtained pursuant to a warrant, which is later found to be defective, will not be excluded if the law enforcement officer acted in objective good faith. Objective good faith would be established if the circumstances surrounding the search justify an objectively reasonable belief that it was in conformity with the fourth amendment. This amendment codifies this rule of law and extends the exception to warrantless searches.

Mr. President, the amendment that I am offering today neither authorizes nor encourages law enforcement officers to disregard the fourth amendment and randomly search a person's home. What it does is address the legal loophole that often allows a criminal to go free, irrespective of guilt or innocence, when evidence crucial to a criminal proceeding is suppressed. The goal of the exclusionary rule is to deter law enforcement conduct that violates the fourth amendment. Therefore, if a law enrcement officer's conduct in executing a search is in conformance with the fourth amendment, applying the exclusionary rule does not serve as a deterrent. It should be noted that the determination as to whether the officer conducted the search in objective good faith would be made by the Court based on the circumstances surrounding the search. Of course if the officer's conduct did not exhibit objective good faith, the evidence would not be allowed.

This amendment is a reasonable extension of the exception currently recognized by the Supreme Court. The extension of the good-faith exception to warrantless searches is a distinction without an effective difference. If a law enforcement officer acts in good faith, it makes no sense to exclude incriminating evidence simply because there was no search warrant. Murderers and other violent offenders should not be set free on mere technicalities. When evidence which can be used to prosecute a rapist or drug trafficker is obtained in good-faith conformance with the fourth amendment, the evidence should be admitted at trial.

Mr. President, those who are opposed to this amendment will downplay the effectiveness of this legislation on our Nation's crime problem. They will claim it only effects 1 percent of the almost 6 million felonies committed every year. Yet, the exclusionary rule has a major impact on the categories of evidence—drugs and guns—which are so directly related to the violence which plagues our streets. In addition, 1 percent of 6 million cases is still 600,000 cases. That's 600,000 cases where without the good-faith exception to the exclusionary rule, the guilty may go free. In addition, this figure fails to take into account those cases which are not even prosecuted because of exclusionary rule problems. According to the Department of Justice, a detailed study of two local prosecutor's offices showed that almost a third of all felony drug arrests were not prosecuted because of the exclusionary rule.

Unfortunately, the Biden exclusionary rule proposal contained in S. 1241 does more harm than good. Although it appears, on its face, to be a codification of the Leon decision which created the good-faith exception, it is not a fair or accurate codification of the decision. The good-faith exception recognized in the Leon decision is already the law. The Biden bill would effectively freeze the status quo in this area of the law and prohibit the Supreme Court from considering broader applications of the good-faith standard. In fact, the Biden exclusionary rule provision, according to the Department of Justice, would create broader challenges to the admissibility of evidence than current law. It broadens the scope of the possible warrant challenges. For example, it would create an opportunity to challenge every search warrant by questioning the subjective neutrality of a magistrate or judge. This invites a subjective inquiry into the magistrate's thought process and goes far beyond the corresponding qualification in the Leon case.

Simply put, the Biden bill creates new legal loopholes that would allow for new and continued challenges to searches. It fails to extend the good-faith exception to warrantless searches. Furthermore, it effectively freezes this area of the law in its tracks.

In closing, my amendment is an important law enforcement measure which will apply in all cases but will be especially helpful in the enforcement of violent crimes. Those who commit such crimes should not go free on mere technicalities when officers act in good faith conformance with the fourth amendment. This amendment will aid in the prosecution of criminals without sacrificing the principles of the fourth amendment.

How to vote on this amendment is clear. If you believe that criminals should not benefit unfairly and be set free when law enforcement officers act in good faith, vote for the Thourmond amendment. However, if you believe we should expand criminals' rights to challenge the admissibility of evidence at trial, vote against the Thurmond amendment and in favor of the Biden bill.

The PRESIDING OFFICER. What is the pleasure of the Senate?

Mr. THURMOND. Mr. President, I yield such time as he may require to the able and distinguished Senator from Utah [Mr. HATCH].

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, this is an extremely important issue. Again, I compliment the distinguished Senator from South Carolina for bringing it to the attention of the Senate and, of course, discussing it in the able manner that he has.

I believe that a vote for the Thurmond amendment is a vote to put more murderers, more rapists, more robbers, more drug dealers behind bars. A vote against the Thurmond amendment is to let the same murderers, rapists, robbers, and drug dealers free to roam the streets where they committed the crimes to begin with.

The so-called exclusionary rule provision in S. 1241, the Democrat bill, is in my opinion and with all due respect, a sham provision. At best, that provision in the Biden bill will only codify an existing Supreme Court precedent which, of course, is unnecessary to do. It is much more likely, however, that the provision in S. 1241 is actually going to be more favorable to criminals than to law enforcement officers.

So the two points I am making are, No. 1, in the Democrat bill, why codify an already existing exception to be exclusionary rule which may preclude the Supreme Court from expanding that exception; and, second, why codify in the Democrat bill something that will be more favorable to criminals than it is to law enforcement officers?

It is not enough to label the provision in a bill "exclusionary rule" and claim that the alternative bill and the Bush bill are the same on this issue. They are not.

President Bush's provision, a modified form of which is before the Senate, will allow into court evidence obtained by police officers in a warrantless search if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it conformed to the fourth amendment. The Biden bill does not allow such evidence into court.

Indeed, I believe that the Biden provision is likely to cut back on the admission of evidence the Supreme Court has allowed at trial since 1984.

Basically, the Thurmond amendment extends the Supreme Court's current good faith exception to the exclusionary rule to warrantless cases and seizures.

In my view, if, as the Supreme Court has ruled in United States versus Leon, evidence obtained based upon an objectively reasonable belief in a warrant's validity is admissible in court, it is only logical to admit into a criminal trial evidence obtained based on an objectively reasonable belief in the validity of a search where a warrant is not present.

Except for the section dealing with the admissibility of firearms, this amendment is basically the same as title III of the President's crime bill, which was voted down last evening. The exclusionary rule, or the suppression doctrine, is a judicially created attempt to enforce the fourth amendment. It is a judicial policy under which evidence obtained unreasonably, according to current fourth amendment standards, is excluded from evidence, or, in other words, is inadmissible.

Although the fourth amendment triggers its judicial application, the exlusionary rule is not a part of the Constitution. It is a court-made rule of evidence that was not adopted for Federal Courts until 1914, in Weeks versus United States; and not adopted for State courts until 1961, in Mapp versus Ohio.

In all those other years, we did not have the rule applicable.

If a causal connection between a piece of evidence and an illegal search or seizure is determined, even the most credible kinds of evidence may be deemed tainted and excluded from trial—the fruit of the poisonous tree doctrine. For example, the discovery of a murder weapon is inadmissible evidence at trial if the weapon was found as a result of an illegal search for business records.

Completely credible and probative evidence critical to conviction, seized in the heat of apprehending a suspected felon, may be excluded from consideration solely because a court deliberating months later believes that it was obtained in an unreasonable fashion. As the rule now operates, a criminal who in fact committed a dreadful violent crime is set free—not because he is innocent, but because the evidence necessary to establish his guilt is deemed to have been unreasonably seized.

As everyone knows, this rule has resulted in several outrageous results. Let me relate some of these troubling examples:

In April 1989, an appellate court in Alaska dropped a charge against a bartender who had sold drugs to undercover State troopers from his jacket hanging some 15 feet from the bar because, the court ruled, the jacket was not within the bartender's reach and the troopers should therefore have obtained a search warrant for the jacket. This is ridiculous but, nevertheless, this is the length to which they go in interpreting this rule.

Just last year, according to the U.S. attorney for the State of Utah, an Emory County sheriff pulled over a Cadillac going westbound on I–70 for a traffic violation. After writing a warning citation to the driver, the officer asked the driver for permission to search the car. In the car, the officer found 89 kilos of cocaine with a street value of $20 million. However, because the officer had not returned the driver's license to the driver and handed him the warning citation before asking to search the car, the court found that the driver's fourth amendment rights has been violated and the exclusionary rule therefore became applicable, excluding the cocaine as evidence. The driver, of course, is now back out on the streets, able to do exactly the same thing that he did before.

Thankfully, in 1984, the Supreme Court restored some sanity to the issue of admissibility of evidence in *United States* v. *Leon*, 468 U.S. 897 (1984). The Leon decision specifically permitted the admission of evidence obtained in conformity with a warrant in circumstances justifying an objectively reasonable belief in the warrant's validity, noting that excluding evidence where an officer's conduct is objectively reasonable "will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that * * * the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding evidence can in no way affect his future conduct unless it is to make him less willing to do his duty." 468 U.S. at 920.

I am confident that exclusionary rule supporters would agree that this rule imposes a tremendously high cost on society. Guilty persons are left unpunished, to return to the streets to do more harm.

The purpose of the exclusionary rule is to deter illegal police conduct. Some people believe that this deterrent function is important enough to impose the tremendous costs of the exclusionary rule on law-abiding Americans and victims of crime and their families. This purpose is said to be important enough to let murderers, rapists, and drug dealers go free.

But if a police officer conducts a search later ruled illegal, and does so in circumstances justifying an objectively reasonable belief that the search was in conformity with the fourth amendment, excluding the obtained evidence has no deterrent effect whatsover. The policeman will make a search in such a circumstance every time; why throw out the evidence and let the crook go free, or the murderer go free, or the drug dealer go free? That is why the Supreme Court created an exception to the exclusionary rule in such a case where a warrant is involved.

Mr. President, there is no more deterrent value in keeping out such evidence where a warrant is not involved.

Suppose a police officer in a squad car gets a call that a robbery has taken place and is given a partial description of the alleged robber. The police officer then comes across a person fleeing the

general vicinity of the crime who meets the partial description. The policeman arrests the person. Let us assume that we all agree that it was objectively reasonable for the policeman to make the arrest. The policeman then searches the person for weapons and finds drugs. But, a court, later reviewing the arrest, decides the arrest was not based on probable cause. Why throw out the drug charge as the fruit of an illegal search?

If the policeman believed the search was lawful as incident to a lawful arrest, and we agree it was objectively reasonable to believe that the arrest was lawful, there is no deterrent purpose served by letting the drug criminal go free. None whatsoever.

The amendment now before the Senate would provide that evidence shall not be excluded in any Federal proceeding on the ground that a search or seizure was in violation of the fourth amendment if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment. This would apply the underlying principle of Leon, so as to admit evidence obtained in such circumstances in cases involving warrantless searches, as well as in cases involving searches pursuant to a warrant.

This principle has already been applied for several years by the Federal courts in the fifth circuit in deciding on the admissibility of evidence obtained through searches and seizures in both warrant and nonwarrant cases. I cite with particularity *U.S.* v. *Williams*, 622 F.2d 830 (5th Cir. 1980). The standard of objective reasonableness is also uniformly applied in determining an officer's exposure to civil liability based on an allegedly unlawful search or seizure. (*Anderson* v. *Creighton*, 483 U.S. 635 (1987).)

This amendment also provides specifically that the fact that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of the existence of circumstances justifying an objectively reasonable belief that a search or seizure was in conformity with the fourth amendment.

It provides that the law of the United States does not require the exclusion of evidence in any court under circumstances in which it would be admissible in a Federal court under this amendment. This makes it clear that Federal law does not require the State courts to exclude evidence obtained in circumstances justifying an objectively reasonable belief that the officer's conduct was consistent with constitutional strictures on searches and seizures. Each State is free to make its own determination concerning the admissibility of evidence in such cases.

I would therefore urge my colleagues to vote in favor of this amendment.

Mr. HATCH. I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I wonder if I might ask the managers of the bill for their indulgence. I ask unanimous consent to proceed for 5 minutes as in morning business?

The PRESIDING OFFICER. Is there objection?

Mr. THURMOND. Mr. President, we have no objection on our side.

Mr. BIDEN. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 1351 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. DOMENICI. I thank the managers for yielding. I now yield the floor.

The PRESIDING OFFICER (Mr. KERREY). Who yields time?

Mr. BIDEN. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, now, after the first round or skirmish on this debate on what is the more effective, tougher, yet fair crime bill, get into a number of very important skirmishes.

When I say skirmishes, I do not mean to make light of their significance or importance. This is the first of several substantive debates that we are about to have on very critical issues that affect the constitutional rights of Americans and the ability of law enforcement to effectively discharge their responsibilities.

What we are talking about in this case is a rule called the exclusionary rule, which has been spoken about by both my distinguished colleagues from South Carolina and Utah. Sometimes when the public hears these phrases that we lawyers throw around, "the exclusionary rule" and "probable cause" and "objective good faith," and we discuss illegal or unwarranted searches and seizures, it gets confusing. So there is the tendency of each of us, in an honest, hopefully persuasive way, to make our case—to try to distill the arguments in ways that will be more understandable by applying them to fact situations in order to explain, demonstrate how the law, if changed, would affect the lives of Americans.

I know both my colleagues and the Justice Department are acting in total good faith when they put forward their examples, when they make their assertions about changing the law the way Senator THURMOND wants it changed and the Justice Department wants it changed although the Justice Department has dropped their wacky notions. Justice came in here with a harebrained idea in their original bill that said a police officer can even search in bad faith. I think the Justice Department's credibility has been so badly tarnished on the notion of the exclusionary rule that I am not sure we should listen to anything they have to say. Even my distinguished Republican colleagues said, wait a minute, this idea that the President sent up here about being able to knock down your door with or without a warrant as long as we find a gun, it is not OK. Even they figured out that most Americans who want to get tough on crime would say, "Hold up. Where did you get that idea?"

Even my distinguished Republican colleagues talked to the Justice Department and said, "hey guys, you are a little off the reservation." We want to get tough, but we are conservatives, and we think a man or a woman's castle is their home. I suspect this is the kind of thing they said. But the bottom line is: even the Justice Department, or the White House—whoever wrote that stupid notion—said we had better drop that out.

So we thought we are going to have a debate on that 2 days ago but even the Justice Department said we had better not try to go that far. There is no sense in shredding the fourth amendment totally. Maybe we should keep some of it in tact. Again, that is my characterization.

But the facts are accurate. They amended their own crazy notions about the exclusionary rule and dropped it, I am told—I in the paper—under pressure not merely from the Senator from Delaware but many Senators on the Republican side of the aisle.

Reasonable people can differ on what we should do. The Senator from Delaware says, hey, look, a police officer makes a mistake. In a circumstance where under present law where he or she has to have a search warrant—a document, a search warrant—if they make a mistake, in that circumstance, and it is good faith, then whatever they seize should be admissible in court.

I have a friend named Sid Bullock, who is one of the best trial lawyers in Delaware. It was nice to work with Sid. Mr. Bullock used to say something special, when he would stand before a jury to sum up things—I know my friend, and I am being very serious when I say this, my friend from Utah, is a fine trial lawyer. He himself has tried many cases. Every fine trial lawyer has a certain technique when he stands before a jury. Sid Bullock used to say something very, very simple and straightforward that caught the essence of what the criminal justice system was about. I think it warrants repetition here. He would stand before a jury and he would say, "Now, look, we are about to hear a lot of accusations and counteraccusations. What I really want you all to do is keep your eye on the ball." He would stand there and say, "A lot of you are athletes, or like

sports. You know, in almost all sports requiring the movement of a sphere through the air, a ball, the fundamental thing you look at—whether you are playing golf, whether you are playing baseball, whether you are trying to catch a football, whether it is volleyball, whether it is basketball—is to keep your eye on the ball, and not all these other things around it." And I respectfully suggest that we should keep our eye on the ball as we discuss this issue.

In order to make this complicated issue clear to all of us, as I am going to attempt to do, I will try the same technique—to attempt in good faith to make my case, give specific examples, or make generic assertions.

My senior colleague from South Carolina talked about how this is going to—if they change the rule the way they want to, as opposed to the way I want to—this is going to put murderers and rapists in jail who today go free. Well, I find that kind of hard to understand. And I am going to spend some time, at the appropriate time, trying to show what the real impact of what they are in good faith, to steal a phrase, attempting to do—the impact of what they will do.

But let us go back and keep our eye on the ball for a minute. My friend from South Carolina said in 1984, 7 years ago, I forget at what time during the year, Congress voted on a bill to accord a good-faith exception to the exclusionary rule. The indication being if we did it then, why do we not do it again now? There is a big difference though. That was before the Supreme Court decision adopting a good-faith exception.

So when my colleagues were voting out here, the Supreme Court had not ruled. We came along and we said in this Chamber, we said, hey, when a policeman has a warrant, he makes a mistake, but it is good faith and he has a search warrant—it is a search where he should be required to have the search warrant—he goes and gets one, if there is a technical mistake relating to the warrant and his enforcement of that warrant, execution of that warrant, then the evidence should be admissible. And the Supreme Court came along and they said, that is right. That should be admissible. That is not a violation of the fourth amendment. That is what they ruled.

So when the Senators voted in 1984, they were voting on the assumption that technical legal mistakes would let criminals go free. But that is no longer the law. The same Supreme Court after our vote adopted the good-faith rule as long as there was a warrant.

Today, we face a much different question. The real question here is the Biden bill before us which says, "hey, look, if you have a warrant and you make a mistake, you ought to be able to admit the evidence." That is what the Supreme Court said.

I find this incredibly interesting reasoning coming out of this Justice Department. They say the Biden bill is worse than the present law. The implication is that the present law is bad as well. It is worse than the present law because it will allow new legal loopholes.

Once again, the Justice Department is demonstrating their lack of information because if I have codified—which they acknowledge I have—the present law, the Supreme Court decision, how am I making it worse than the law is now? That I think it is down to the crux of it. If I codify what the Supreme Court said, that means that is as far as we can go. That is really what has them worried. It does not make the law worse than it is now. It makes it better. What worries them is it might end the prospect of eroding the fourth amendment rights of Americans in America.

You know, we all hear these stories and there are, let me say at the outset, there are horror stories that can be shown where a wanton, vicious criminal is let go because his or her constitutional rights are violated. It is reprehensible. It is angering, and it is frustrating, on the rare occasions when it occurs. But the reason the Court says that is, it says that if you are going to be able to violate the constitutional rights of a criminal, then you are also going to be able to violate the constitutional rights of an innocent person. And we know that power corrupts.

The reason why we have a Constitution is not to protect the guilty; it is to protect the innocent. If I am able to violate your fourth amendment rights and you are a criminal, then I clearly can violate yours, if I do not like you, and you are totally innocent. And people say, well, that will not happen.

The reason it will not happen is we all know anyone with authority is good. They are not going to do that. Anyone with authority, any police officer, is clearly only going to violate the rights of the guilty, not violate the rights of the innocent.

If I knew that to be the case, if Plato's philosopher king could come down and in fact enforce that, then I would say, right on, let us do it that way. I do not want the criminals to have those constitutional rights. I do not want them knowing they are guilty. I do not want them to be able to go free on any technicality, other than the word of God. But the reason we do this is not to let them go free. The reason is so people who are innocent do not have the power of the State used against them.

You may say that is crazy, that never happens. Ask the folks that are sitting up here behind me. I wonder if they are absolutely certain that in their hometown, in their city, in their State, there is no one in police authority who might not be willing to violate their rights, who in fact might not if there were not protections against strip searches when pulled over by automobiles and without probable cause. I wonder whether they think they would never be harassed. I wonder whether they have never been harassed parking in a parking lot, or in a parking space, or at a parking meter, or in a traffic violation. I am sure none of them have ever been harassed. I am sure that is true, because they are all innocent.

But the fact of the matter is, the reason why we do this is not to protect the rights of the guilty people, but the rights of innocent people. You may say, that is kind of crazy, Biden. Everybody knows that none of that would ever happen.

Well, let me just touch on a few points my colleagues have made. The implication here is—and I made the point yesterday, which they reasonably and understandably responded to and acknowledged—that in only 1 percent of the cases nationally does this issue even come up.

They go on to extrapolate from that—keep your eye on the ball here—Biden says, in States where the studies have been done, like California and others—in California, it is 0.7 percent, but in roughly 1 percent of the cases does the prosecutor say, hey, look, I cannot take that case to trial because I, the prosecutor, believe you have violated the fourth amendment rights of that individual, and we can never get a conviction, because you have violated those rights, or you should not have, and even if we could, we should not, and he says, "so I am not going to take it to court." Keep your eye on the ball now. So far so good.

Then my friends over here stand up and imply—not imply, point out—that that could be up to 600,000 cases. And then they imply from that, that it means 600,000 people are guilty and were let off. That is, No. 1, implicit in what they say. Keep your eye on the ball now. And No. 2, they say, if we had our good faith exception, all 600,000 of those criminals would be in jail. That assumes two things. Keep your eye on the ball. It assumes, No. 3, that in every one of those cases that were thrown out, there was a good faith mistake made by the police officer. I find that, No. 1, that is a real leap of faith and logic to reach that conclusion. And, No. 2, it assumes—to make their drop dead case, you know, how bad this is—that all 600,000 of those people were guilty.

So that if their law was in place, no one's rights would be violated except those 600,000 people, who were not proceeded against, who were not proven quilty of anything, but would have been because the cop acted in good

faith for certain. That is the kind of leap you have to make.

So let us talk realistically here. The cases that they can cite, and I can cite, where a genuine, real life, bad guy got off, because a real life, good cop made a real life, good faith decision that turned out to be a violation of the Constitution, are minuscule. I cannot give you the number, but I can assure you, applying simple Aristotelian logic, that it is significantly fewer than the seven-tenths of 1 percent of the cases that are referred to in this California study, or the 1 percent of the cases in America.

Let us balance that against where the risk is. We would all have to, I believe—and I am prepared and anxious to debate this point, if there is not agreement on it—I think we can all stipulate that what I just said is logically and factually true, that some percentage of those cases that were dropped are not dropped because of a good-faith mistake and, too, some percentage of those people where the cases were dropped, the people were innocent anyway.

So we acknowledge we are talking about a relatively small number of people. What do we balance that against? These folks say, OK, to get that relatively small group of people, we are going to make a relatively big change in the way this country has operated since our Founding Fathers said we have had bad experience with people in power. People with power come in and knock on my door, and if I do not answer, they break it down, because they do not like me. They do not like the fact that I do not like the king. They do not like the fact that I am not paying an unfair tax to those Brits back there, those Englishmen. They do not like the fact—and so on and so forth. So they knock my door down.

We said, wait a minute, our Founding Fathers said: In our new country, we are not going to let that happen. So we are going to err on the side of protecting all those people out there that we know are victims of the present practice.

Let me say again—keep your eye on the ball here—the next thing I am going to hear, I predict, is: Well, BIDEN, things have changed. You are equating what the British Crown did to good colonists to what police would do to good Americans. Are you saying the police in America are like those British soldiers were back then? Keep your eye on the ball.

I am saying, no, that is not the case. You are talking to a guy, who I believe—I may be mistaken—every major police organization in America has endorsed as a candidate for election, repeatedly; and I am happy to say I have the support of the overwhelming number of police officers of this country—not only mild support, but active support.

I am one of the few guys who stood on this floor, by the way, and defended police when the orgy of charges of brutality came out against them.

So again, keep your eye on the ball, because you are going to hear arguments here about Biden saying the cops are just like the British soldiers. But let us again do a little statistical game. There are—I forget the total number of police officers; I am looking at my staff—there are 500,000 police officers in America.

Now, all it would take would be 1,000 of them not to be very sensitive to the Constitution to create a little bit of a problem. We saw what happened in Los Angeles. I believe that is an aberration, but nonetheless, it happens, what these fellows want to do. In order to get that, keep your eye on the ball.

Again, for that infinitesimally small number of guilty people who do get away, they want to put in jeopardy, at the hands of that small number of people in authority who are not good guys—they want us to trust them, that by getting the bad guys, none of the innocent guys will get in the way.

Now, look, how about the cases where in good faith—let me ask, How much time does the Senator from Delaware have?

The PRESIDING OFFICER. Thirty-five minutes and thirty seconds.

Mr. BIDEN. We are always talking about the case where a police officer comes in and in good faith, he goes and he knocks your door down, or searches your automobile, or frisks you on the street. It was a violation of the fourth amendment, and in a good-faith mistake, he or she finds guns, drugs, murder weapons, et cetera.

For every one of those cases, I assure you there are considerably more where a police officer, in good faith or bad, searches someone, violates their constitutional rights, and finds nothing at all. Except they denigrate the individual they have searched, and violate the sanctity of the home of the person they have barged in on and found nothing.

Now, the incidences of that happening with the change in the law saying you can have a good-faith—good-faith—exception; you can admit evidence in good faith when you do not have a search warrant, even in a circumstance where a search warrant is required—because that is really what we are talking about.

The Senator from Utah—and I am going to ask him at a later time in this debate if he would cite the case for me and give me the citation of the case and what year it occurred about that fellow with all the cocaine in his car, because I wish to speak to that. I expect there is a clear explanation for that. I am not sure until I find out the date and time and the name of the case.

But what we have is in many of the cases you are going to hear about and which you have heard already, were cases—remember the case where we said the police officer is chasing somebody in hot pursuit; a crime had just been committed. He has a description of what he thinks the person looks like, and he is out there in hot pursuit searching for that person.

Under our law now, there is no requirement for a search warrant; none at all. So right now, if that officer had probable cause to come up and collar the guy who looked like the bad guy, and a reasonable man would conclude that the officer was acting reasonably, that case would not be thrown out.

The only reason this case was thrown out which the Senator talked about—and I noted he did not cite the case; I do not know the name of it. But I would be willing to bet it is because the judge said, "Hey, wait a minute. You said you were looking for a red-haired guy that was 6 feet 8, and you ended up jumping on a black-haired guy who was 4 feet 3." Because if there was reasonableness, an objective mistake, how is that different than probable cause, unless what my friends are trying to do is really get rid of the notion of probable cause. It is a pretty basic notion in America.

I want the police to have some relatively good reason, not beyond a reasonable doubt, but a probable cause to be able to do something to somebody.

You know, you are speeding; there is probable cause you broke the law. You are running away from the scene of the crime. There is probable cause. Somebody comes out and says you have 14 46-inch televisions in your one-bedroom apartment, and you live next door to an appliance store that has just lost 14 46-inch televisions. There is probable cause. It is a fundamental basic requirement under our legal system.

So again, keep your eye on the ball. The example given of chasing the guy, looking for the guy, that is not where you need a warrant anyway. So this whole thing does not apply. If the guy acted in good faith, in almost every court, that would meet the test of having had probable cause to go after that guy. That is basically what it means.

Now, if they threw the case out, either the guy was not acting in good faith, or the judge is stupid, both of which are possible. And the case is an aberration.

But again, keep your eye on the ball. What we are talking about here are cases where our history has said, "Look; before you go ahead and knock down the door, rip apart the car, body search the individual, you have to have some reason for doing it."

And all we are saying, and what the court has been saying, this conservative Supreme Court, all they are saying is, "Look; all you have to do is go to a judge and say, 'Hey, Judge,'" and any magistrate will hear you any time you go as a police officer. You go and

say, "Hey, Judge; look. Here is why I think I should be able to go into that person's house; that person's car," or whatever. You do not have to say "beyond a reasonable doubt." Just give the reason. Probable cause is relatively easy to meet.

The judge says, "OK; here is a search warrant. You can go do it." In the case you heard, and all the other cases of cars riding down the highway, you do not have to go to a judge if you have a reasonable basis to think that something is happening.

Or you do not have to go to a judge at all, if somebody, knowing they do not have to waive the right, says, "By the way, search my car. We waive the right; search it," you do not have to have probable cause there. You do not have to have anything, as long as you did not coerce that person, beat him with a rubber hose, and say, "Tell me I can search your car."

What my friends are doing is they are entering into a new concept here. They are saying, in the cases where you ordinarily need a warrant, it is not good enough. Biden says you get a warrant; there is a mistake in it. It is OK. We want to say if you, the police officer, in making your own judgment of what the Constitution means, if you conclude you do not need a warrant—you, the police officer—if you conclude you do not need a warrant, if you conclude you know what the fourth amendment means and you are acting in good faith when you do that, then you can do things that ordinarily require a warrant, even when a court would otherwise say, "Hey; you do not have a right to get a warrant; you do not have a right to go with or without a warrant."

I say to my friends here, the issue is not only that infinitesimal number of cases where the bad guy gets away. But what is at stake here is the inadvertent and unintended harassment of innocent people, allowing for the first time in a long time for individual police officers to be able to make independent judgments that they do not need search warrants anymore; letting them determine what probable cause means; and giving the people with the power the right to do things that courts otherwise by definition would conclude were illegal, because that is really what they are saying here.

The essence of what they are saying here is we want to change the law in a way that tells the Supreme Court: Your present interpretation of what is constitutionally protected is not the one we agree with. We are telling you to say something different. So we are saying let the police officer determine, if he in good faith makes the mistake, that it is OK, even if it violates your constitutional rights.

Let me also point out, and then I will reserve the remainder of my time, the implication again is made that the police officers, the FBI, and others, are sort of breaking down the door, straining at the ropes, saying please change this law; this is putting us in a straitjacket. So many bad guys are getting away, we want a change.

I asked that question of the Director of the FBI, Judge Sessions, who testified before our committee. I asked him whether or not the exclusionary rule should be changed in any way, even the way I was suggesting. He said, "The exclusionary rule is important to the proper carrying out of law enforcement responsibilities, and by and large I am happy with it the way it is." This is the head of the FBI.

Police officers will say, yeah, if you are going to change it, that is good, I would like to have it changed. But this is not at the top of the police agenda. They are not banging down the door of every Senator in this place saying, "Please change the exclusionary rule; I can't do my job," because, although they would like this change, some of them, they understand it is also of great benefit to them, too, because it has required them to become as good as they have become. It has required them to become as professional as they have become. you do not hear police up here saying, "By the way, let us do away with the Miranda ruling." They figured out that is the best thing for them to keep control of. It protects them as well as it does other people.

So the point is that I have no doubt the police endorse the change, but I also have no doubt that this is not the No. 1 issue on their hit parade.

Mr. President, I reserve the remainder of my time.

I yield the floor.

The PRESIDING OFFICER (Mr. FORD). Who yields time?

Mr. HATCH. Mr. President, I yield myself such time as I may need.

Mr. President, I have to say that the policemen in this country may not be knocking down the doors to change the rule, except those who have seen murderers go free who then go out and commit other murders, robbers go free who then go out and commit other robberies, drug dealers go free on technicalities and then go out and spread drugs among our kids, all because of technicalities.

Those police officers want these rules changed. They do not want to do things that are wrong. They want to do things that are right, but they want to get criminals and they want to nail them. They do not want some judge letting them off on some technicality so they can go out and murder somebody else or deal more drugs.

I have to say there are some other people who would like to have these rules changed: The parents of children who have been killed where the murderer gets off, the wives of husbands who get killed where the murderer gets off, or the parents of children who become drug addicts where drug pushers and the drug lords get off.

Mr. BIDEN. Will the Senator yield for a quick question?

Mr. HATCH. Yes.

Mr. BIDEN. Are these cases where the police officers made good-faith mistakes?

Mr. HATCH. In some cases. Of course, after Leon, evidence obtained in good faith reliance or on a warrant, is admissible. But since Leon, in searches without warrants, these cases with warrantless searches still exist; you bet.

In other words, it is still going on. Unless we change the law to what the distinguished Senator from South Carolina would like, we are going to have these types of injustices against the people of the United States continuing to occur. All he is asking, if there is reasonable, objective belief in the case of warrantless searches, we should not let these people off under some court-formulated exclusionary rule.

I want to mention just a couple of other things.

Mr. President, I notice that the distinguished Senator from Delaware, our chairman of the Judiciary Committee, mentioned that all he is doing is codifying the Leon case.

Mr. President, I draw attention to Attorney General Thornburgh's May 14, 1991, letter to Senator BIDEN. He states:

* * * even considered on its own terms, [the Biden exclusionary rule] is not a fair or accurate codification of the Leon rule * * *. [The Biden] provision incorporates apparent redundancies and surplus language that would give rise to interpretive problems and other wasteful litigation.

It would give rise to interpretive problems and other wasteful litigation. That is what the Attorney General is upset about.

The Attorney General goes on to say:

The lead-in language in the provision states that the warrant must be issued by a "detached and neutral" magistrate, but the second enumerated exception to the proposed statute's general rule of admission states that evidence may be excluded if the magistrate did not exercise "neutral and detached" review. Are these conditions the same or different? If they are the same, why are they both stated? If they are different, what does one add to the other?

The proposed [Biden] formulation of the exceptions to admissibility departs from Leon. For example, the second enumerated exception, as noted above, covers cases in which the magistrate did not exercise "neutral and detached review of the application." This potentially invites a subjective inquiry into the magistrate's thought processes, and goes far beyond the corresponding qualification in Leon [468 U.S. at 923], which applies to cases in which the "issuing magistrate wholly abandoned his judicial role in the manner condemned in *Lo-Ji Sales, Inc.* v. *New York*, 442 U.S. 319 (1979)." The cited case involved an egregious situation in which the magistrate issued a largely blank warrant, accompanied the officers on the search, and gave ad hoc authorizations to seize particular items at the search site. In contrast, the formulation proposed in [the Biden proposal]

would broadly invite attacks on the use of evidence based on alleged failings of the issuing magistrate in "neutrality" or "detachment," even though he was unquestionably carrying out his normal judicial function.

In short, the purported codification of Leon in [the Biden bill] is narrower than the actual Leon "good faith" exception, and is subject to interpretive problems and deficiencies in drafting. It would accordingly be unacceptable on its own terms, even if there were some legitimate purpose to be served by codifying Leon.

I think that has to be said.

The Thurmond amendment does not undermine the fourth amendment. The standard of reasonable search and seizure is not altered at all by the amendment. There is no more incentive under this amendment for a policeman to make an illegal search than exists today because the only time evidence is admitted under this amendment is when the policeman has an objectively reasonable belief the search is lawful. Now that policeman, if he thinks he is conducting a lawful search, he is going to conduct that search with or without the amendment. So it is not a matter of deterrence here. The only question is whether to admit the seized evidence that would convict the criminal or to let the criminal go free on a technicality.

Let me stress the exclusionary rule is not part of the Constitution, it is not a constitutional right. As the Court in Leon noted, "The rule" operates as "a judicially created remedy designed to safeguard fourth amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved," 468 U.S. at 906, quoting *U.S.* v. *Calandra* 414 U.S. at 3481.

I was also interested in the comments of the distinguished Senator from Delaware about how few people really are affected by this. Tell this to the wives of the husbands who are murdered. Tell that to the parents of the child who becomes a drug addict and kills himself. Tell it to anybody who was an innocent member family who gets hurt because of the criminal action and conduct of others. I admit that these rules are not violated all the time. I admit they are exceptions to normal police conduct. I admit that sometimes people who are innocent are charged with things that make them appear to be guilty. But that doesn't mean a wrongdoer should go free because evidence obtained in objectively reasonable search is legal is suppressed.

I am not sure that statistics are particularly helpful in arguing about the pros and cons of reform in the exclusionary rule. Some cases that are not pursued because of the exclusionary rule may not show up in a particular study, and we know there are a number of such cases. Moreover, even a study comparing the number of prosecutions declined with the total number of adult felony arrests does not reflect the effect of the exclusionary rule in forcing the prosecutor to plea bargain a case to a lesser offense or sentence.

Furthermore, let us assume that the exclusionary rule impacts on as few as 1 percent of the total number of arrests across this country. That is still a very, very substantial number. I wonder whether, when confined to drug cases and murder cases, or other cases of violent crime, the percentage is higher. And I suspect that it is. There is evidence to this effect, that the percentage probably is higher. But even at 1 percent, it is significant.

Be that as it may, and regardless of the exact percentage, to a victim of a violent crime or an officer on the beat, each case is important. Moreover, how many additional crimes do these freed lawbreakers commit, once the exclusionary rule allows them to get off on technicalities, because the exclusionary rule prevents their conviction? I cannot begin to tell my colleagues, but it is a lot more than 1 percent. And there are a lot of people, thousands in this country every year, who suffer because of the stringent interpretations of this rule.

I might note, Mr. President, that Justice White, for a majority on the Supreme Court in the U.S. versus Leon case, decided in 1984—I think he completely answered the argument of the distinguished Senator from Delaware. He noted in part that one study suggested that the exclusionary rule—

results in nonprosecution or nonconviction of between 0.6 percent and 2.35 percent of individuals arrested for felonies.

We are talking about felonies—

The estimates are higher for particular crimes the prosecution of which depends heavily on physical evidence. Thus, the cumulative loss due to nonprosecution or nonconviction of individuals arrested on felony drug charges is probably in the range of 2.8 percent to 7.1 percent.

Justice White noted that a number of researchers have concluded that the impact of the exclusionary rule is insubstantial. He then made a very telling point. He said this:

[The] small percentages with which they deal mask a large absolute number of felons who are released because the cases against them were based in part on illegal searches or seizures.

Time after time the cases that make it to trial only to be reversed because of a technical good-faith mistake under the exclusionary rule, allowing the criminal to go free thereby, cause most citizens to question exactly where our criminal justice system is heading.

Indeed, I would like to move the discussion from the misleading and theoretical world of statistics to the real world. Charles Brandt, chief deputy attorney general for the great State of Delaware, the State from which the distinguished chairman of the Judiciary Committee comes—he was there from 1974 to 1976 as the chief deputy attorney general, and past president of the Delaware Trial Lawyers Association—wrote an article in the January 1990 Reader's Digest entitled "Let Our Police Take on the Drug Dealers."

He excoriated the exclusionary rule and does not understand why the good-faith exception in warrant cases cannot be extended to warrantless searches. He said, with respect to the exclusionary rule:

Every day in America, drug dealers walk away from their crimes because of legal hairsplitting. Police Departments, trying to follow court guidelines on proper procedure by studying cases like those above, now find their hands cuffed, their eyes blinded and their ears plugged by the very laws they have sworn to uphold. The sad result is that today, all over the country, drug markets operate flagrantly, protected by rules that exclude authorities better than any steel door.

He then goes on to say:

Steven Schlesinger, former director of the Bureau of Justice Statistics, estimated in Crime and Public Policy, that the exclusionary rule derailed 45,000 to 55,000 serious criminal cases in 1977, 1978 alone.

That is a lot of cases. Let us say it is a smaller percentage than that, let us say it is 5,000 or 6,000—that is a lot of cases around this country, of criminals going free to continue to commit the crimes they have been doing against the people in this country.

But, if that 45,000 to 55,000 is correct, that is pretty serious stuff. And it looks to me like we need to do some fine tuning here, and that is what the distinguished Senator from South Carolina is trying to do.

He is not trying to come up with a rule that makes the fourth amendment a nullity. He is trying to come up with a rule that makes sense, that gets these criminals. And when we know they have done the crime and we have the evidence that proves it, if there has been an objective, reasonable belief for having obtaining that evidence, it ought to be admissible.

As the prosecutor and chief deputy attorney general for Delaware, Mr. Brandt, who wrote the article said:

I know firsthand how the exclusionary rule decisions affected drug enforcement. They constrained the police to operate in slow motion while drug traffickers picked up frightening speed.

In addition to being a prosecutor, I've served as a defense attorney and have seen from the inside how criminals use the rules to protect their activities.

Some of the cases I have cited and will cite are derived from Mr. Brandt's article. For example, in a case occurring not long ago, Alabama police were tipped off that a vehicle was transporting guns and drugs. With their own guns drawn they surrounded the car and noticed a partially smoked marijuana joint on the dashboard. They ordered the occupants to get out.

The Alabama Court of Criminal Appeals decided the police could not have

been sure of their informant's reliability, declared that the seizure of an automatic pistol and drugs was illegal, and remanded the case to the lower court without the key evidence.

In United States versus Perez-Esparza, an informer who had previously supplied the DEA with reliable information 20 out of 25 times, tipped them off that a specific car was being used to smuggle narcotics from Mexico into the United States and our people, the United States Border Patrol agents, subsequently stopped the car and detained the driver and Perez-Esparza. They stopped him for 3 hours, until DEA agents arrived.

Perez-Esparza was then read his Miranda rights, told that he was being detained on suspicion that his car was transporting narcotics. And further told that agents were obtaining a warrant for a search of the car.

Perez-Esparza then gave oral and written consent to the search of his car. The search uncovered cocaine and, again, being warned of had his rights, Perez-Esparza confessed.

The Ninth Circuit Court of Appeals overturned the conviction under the reasoning that while the informer's tip provided a sufficient basis for the officers to stop the car and question its driver, it did not support probable cause for an arrest. Thus, the 3-hour detention was an illegal arrest, rendering the suspect's consent to the search of his car ineffective, even though the court agreed the consent was fully voluntary.

All evidence stemming from the defective consent to the search was thereby suppressed. And Perez-Esparza was set free to go out and sell some more drugs to your kids and my kids, or grandchildren, or neighbors, or friends, or even people we do not even know.

In *U.S.* v. *Sanchez-Jaramillo*, Seventh Circuit court, cert. denied 449 U.S. 862, a 1980 case, Immigration and Naturalization agents acting with probable cause, arrested Sanchez on a charge of counterfeiting alien registration cards.

After being arrested, Sanchez consented to a search of his apartment. During the search the agents found Mr. Cruz in a bedroom. They read him his Miranda rights and told him to sit in the living room with Mr. and Mrs. Sanchez while they continued to search.

Two locked suitcases were then found in the bedroom where Cruz had been sleeping. Cruz told the agents they belonged to him. At the agents' direction, Cruz opened the suitcases. Cash and materials used to counterfeit alien registration cards were found inside. Cruz was then arrested. He was later convicted. The Seventh Circuit Court of Appeals overturned the conviction holding that the agents lacked probable cause to detain Cruz and that any consent Cruz gave for the search of the suitcases was ineffective as it cannot be sufficiently voluntary to purge the taint of the illegal detention. The court held that both the evidence in the suitcases and the statements made by Cruz subsequent to the search should have been suppressed.

I can go on and on. So whether it is 1 percent or 10 percent, whether it is 45,000 times a year or 55,000 times every 2 years, that is a lot of people who are getting off who do not deserve to get off where the evidence is found pursuant to good faith with or without a warrant.

I think what the Supreme Court is trying to do is get it back to a balance where not just criminal rights are protected and defended all the time, but victims rights are protected and defended and maybe get it in a little bit of a balance. And they can do it constitutionally. They have been doing it constitutionally, but they do need some help legislatively in order to get this done so that we can put these people off the streets, and stop the murders, and stop the violent crimes, and stop the violence, and stop the drugs, and the drug pushers, and the drug Kingpins, and do what we can to put them out of business.

Nobody wants to take away constitutional rights. I do not want to. Nobody wants to unfairly act even against criminals, or at least I do not want them to, nobody here in the Senate does. Policemen do make mistakes. Law enforcement officials can make mistakes. I do not think many of them want to do wrong in making those mistakes. I do not think the burden of having to show that they acted with objective, reasonable belief that their search was lawful is always an easy burden, whether there is a warrant or whether there is not. But if they can meet that burden, then we ought to give the police a chance to do so in the interest of cleaning up the awful mess in our streets in our country today.

I have to tell my colleagues, I have a great deal of respect for my friend from Delaware. There is no question about it. We are very close friends. We work together on a lot of things, and I have a great deal of respect for his ability as a lawyer, and a great lawyer. I think he is truly a great chairman of our committee, as was his predecessor, Senator THURMOND, who is now the ranking member.

But I have to tell my colleagues, I think he is hamstrung by a number of factors to really do the things he knows he needs to do. I will not go into those factors, but it is no secret that ideology can play a role on both sides of this floor in matters, and there are people in this body who just do not want to get tough on crime. They talk it at home, but when they have the opportunity to do something, they will not do it.

I do not want to get tough on crime to the point that I take advantage of people or that I violate their constitutional rights. But where you have a police officer who is following through and stopping some punk from killing somebody, or from continuing to kill other people, or from passing drugs, or from violent crime, and he obtains evidence with a reasonable, objective belief that his search is lawful, my gosh, we should admit the evidence. I mention again that the exclusionary rule is not a constitutional right itself. Nothing in the Constitution compels the exclusion of illegally obtained evidence.

I read an article not so long ago that a high percentage of Americans have had some contact with criminal activity against them. It is getting bad in our streets. We are all suffering, and the country is suffering. We are awash in drugs and everybody knows about how well armed they are, and the type of murders they are committing. This city is a perfect illustration, the death capital of our country, and a lot of it comes from drugs which involve all kinds of criminal activity.

We can sit back and act like these wonderful rules that some liberal mentality has come up with should be preserved at all costs and ignore the victim's rights as well, or we can balance it, protect the rights of the accused so that they have every shot constitutionally but also protect the rights of the victims whose numbers are increasing every day.

Do not use statistics with me. I do not care if it is 1 person per year or 55,000. I would naturally want it to be 1 rather than 55,000. The distinguished Senator from South Carolina is trying to do something about crime in the streets and trying to do it in a good faith way, he is doing it in a legal way and he has the backing of the President of the United States and the whole Justice Department.

I have to say, as much as the distinguished Senator from Delaware can lay claim to the support of police officers all over the country, I have to tell you, Senator THURMOND has the respect and the support of every police officer in this country who understand this issue. We are talking about a country that has the potential of going down the drain if we do not stop the criminal element.

As the father of 6 children, and grandfather of 11, and a 12th on its way, I am concerned about this. I have to tell my colleagues, I do not like to have to get tougher on crime than we are in some respects, but we have to move in that direction.

If we can do it fairly, like the distinguished Senator from South Carolina is trying to do, I think we will benefit everybody in our society.

Yes, there will probably be some mistakes. Yes, there will probably be some unfairness. But there are going to be

mistakes and unfairness under the current system although all the unfairness and mistakes seem to be against the victims, against the law-abiding citizens.

It is time to put these people out of business who do criminal activity. It is time to put the violence down. It is time to stop the wanton murders in our streets, not only here but all over the country. I have to tell my colleagues, the drug cases are where a lot of these exclusionary rule or suppression of evidence cases arise.

Their rights will be protected. It is just that we will have the law enforcement tools to do something about the degradation that is happening in our streets. It is about time we did. Unless we pass what the distinguished Senator from South Carolina, and the President of the United States, and the Justice Department, and virtually every law enforcement official in this country would like to have, that is this amendment, then I have to say we are not doing as much as we can about the crime problems happening to our citizens and people in our country. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, my friend from Utah is overly generous in his compliments of the Senator from Delaware and a very skilled debater. I am going to try to play the part of the Senator from Utah for a moment, and use the debating technique he just used to make his point, if I may, to make a point.

Let me start by saying that for every constitutional protection that exists in the Constitution, because it exists, some guilty person is protected. Because of free speech, there is some smut peddler somewhere who has been protected. Because of the free speech clause of the first amendment, there is some totally irresponsible, maniacal newspaper person who has ruined the reputation of somebody in the public who is protected. Because of the second amendment, there are some thugs and drones of society legally purchasing guns and gunning people down in the streets. I will not go through it all—because of the fifth amendment, the sixth amendment, the ninth—not the ninth amendment—there are people who are guilty as sin but are not able to be prosecuted because of the protection built in to protect the innocent.

My friend is the most persuasive man—weaving from whole cloth—that I know. Let me give you an example. He just acknowledged that we are talking about a relatively small number of cases, and by the time he sat down, he said the passage of this amendment is really going to make the streets safer—the implication being that drugs are going to be off the street. If you listen to it, there is going to be this phenomenal impact.

Let me play back the argument the other way, not about the fourth amendment. What do we say to the mother—and given time I will get you names of individual mothers—whose child is shot dead just because they have visited a next door neighbor's home and a father legally having a gun in that home, legally having it in his possession—the child dies. There is no requirement you must keep guns locked up in the home. Hundreds of kids a year are shot dead because of the second amendment right of individuals to bear arms—not criminals, good people—to bear arms. What do you say to that mother whose child is shot dead because a father wanted to keep a pistol in the nightstand drawer? Do you say, well, it is a second amendment right you have to understand? What do you say to the mother whose child gets shot dead in a drive-by shooting where a punk walks into Kmart and buys, legally, a handgun or a semiautomatic weapon or a shotgun, walks out of the store with that gun, and in the process of conducting their drug trade, kills the child standing on a street corner? What do you say to the mother?

They say, why should anybody be able to buy those guns? Why should Kmart have those guns up there like that? Why do we not have guns registered and only people who can prove they are using them for hunting and have hunting licenses and meet the following tests have them? Why? Why? Why? Hundreds of innocent children killed. The reason is because the Senator from Utah and the Senator from Delaware and the Senator from South Carolina take the Constitution seriously, and it says people, even punks, are allowed to bear arms. That is what our Constitution says. Punks can bear arms.

Drug dealers can bear arms if they have not been convicted. And even if they have been convicted, we have no way of knowing whether they have been convicted when they walk into Kmart to buy the gun today.

The Senator stands up here on the floor with great articulation and passion and talks about the second amendment. I am willing to bet you there are 10 times as many people killed by guns in the hands of punks who legally buy them than there are murderers let go because of the exclusionary rule where there has been a good faith mistake made by police officers.

Mr. HATCH. Will the Senator yield?

Mr. BIDEN. I can never prove that.

I will in just a second.

I would think that all you have to do is pick up the newspaper and read. But we here understand there is a Constitution and the Constitution protects the right of punks to buy guns. It protects the right of junkies to buy guns. And we know what they do. So I could make the same kind of argument. But it is not relevant to the case at hand.

I yield for the question.

Mr. HATCH. The Senator raises some interesting points with regard to the use of weapons in our society, but the point I am making is that if the punk kills the mother's child, then evidence of that murder obtained in an objectively reasonable belief the search was lawful should not be suppressed. That is what I think is the difference.

Now, I decry the same things the distinguished Senator from Delaware does.

Mr. BIDEN. This is on the Senator's time, I assume, if it is not a question because I have not much time left.

Mr. HATCH. Yes.

The PRESIDING OFFICER. The Senator from Delaware is correct.

Mr. BIDEN. I am delighted to have the Senator keep speaking. I do not have much time is what I am saying.

Mr. HATCH. I do not want punks or drug pushers or anybody else to be able to have guns. They will buy them from Kmart or they will get them illegally by stealing them or get them through the black market or otherwise. But what I do not want to have evidence obtained on an objectively reasonable belief the search was lawfully suppressed because of a rule that I think is weighted in favor of protecting the criminal rather than the victim. I think that mother's rights ought to be protected against that punk who killed her son, and that is all the distinguished Senator from South Carolina is trying to do.

We can debate this forever more on why it is important to have an exclusionary rule. The distinguished Senator from Delaware and myself may agree on a number of aspects of that, but what the Senator from South Carolina is asking is that we accept his amendment that would allow warrantless searches as long as they are pursued on an objective, reasonable belief the search was lawful.

I am sorry to interrupt the Senator, but I wanted to make that point.

Mr. BIDEN. Mr. President, I would like to invite—I mean this sincerely—either of my colleagues to interrupt. It is not an interpretation. This is what debate is supposed to be. The only reason I made the reference I did, I do not have much time left under the time agreement and I wanted to make sure that we were allocating it to whomever was speaking.

The PRESIDING OFFICER. The Senator is correct and the debate by the Senator from Utah was charged to his time.

Mr. BIDEN. The point I am making is we can give very emotional arguments appealing to the genuine emotions of people to make a case that is not relevant to the case at hand. That is the only point I was making.

The mother who loses her son because some punk can buy a gun in Kmart and kills her son, who is an in-

nocent bystander, is not going to find much relief in the fact that the kid who kills her son does or does not go to jail or whatever. Her son is dead. That is the only point I was making.

Every amendment in the Constitution—every amendment in the Constitution—provides for what is being characterized here as loopholes for the abuse of society. Every one of them. But the reason they are there is because in the wisdom of the over 200 years of history of this country it has been concluded that the greatest danger of all is for the individuals, the innocent individuals, not to have the protection of those same amendments.

So there is not a single one that I can think of that does not have the effect of letting somebody, somewhere along the line who we find incredibly distasteful, who we find without any redeeming social value, take advantage of that Constitution.

Mr. HATCH. Will the Senator yield?

Mr. BIDEN. I will be happy to yield.

Mr. HATCH. This can be on my time.

I do not disagree with the Senator about some of the things he is saying, but no one is ever let off for committing a crime because of the second amendment.

That is totally irrelevant. That is the point I am making. If someone uses a gun to kill, that person is going to be prosecuted for murder. The only way he will not be convicted is unless some court lets him go because of the exclusionary rule, or some other rule.

But the fact of the matter is one of the ways he might be let go is because of the exclusionary rule. That concerns me, because if the exclusionary rule is fairly applied, I can live with that.

But what we would like to do is even up the fairness. The distinguished Senator from South Carolina is trying to give the victims some rights, too. All he is saying is: Look; do not keep out evidence that is obtained with an objectively reasonable belief the seizure was lawful because doing so has no deterrent effect at all. That is all he is saying.

To me, I think that is a worthwhile statement. He is saying it with regard to warrantless searches, which does extend the exclusionary rule beyond the Leon case. I happen to disagree with the distinguished Senator from Delaware on that issue because I think it is time we get tough, not allow these people to get off scot-free, and go out and continue to do their criminal activity and kill others when the police officer has acted with objectively reasonable belief in apprehending that criminal and obtaining the evidence that will convict that criminal. That is the difference between us.

Frankly, I do not believe that my colleague really would vitally disagree with that particular proposition or that particular change if it was not that he is representing his whole side on this matter.

Mr. BIDEN. I find my friend from Utah one of the most interesting fellows in this body. He kills you with kindness.

He just said I would disagree, but for the fact that—I have some political constraint. I happen to disagree with him because he is wrong, having nothing to do with any constraint. But he is very, very good at that.

Let me move on, in the time that I have left.

There is a very, very impressive letter that a friend of both of ours from the State of New Hampshire has sent to us, Senator RUDMAN. He cites a case that I find very interesting, and he is of the view that it is a very bad idea to stretch the change in the constitutional application of the exclusionary rule as far as is being suggested.

He says the Supreme Court noted in Collidge versus New Hampshire:

> Prosecutors and policemen simply cannot be asked to maintain the requisite neutrality with regard to their own investigation. The competitive enterprise that must rightly engage their single-minded attention cannot expect that * * *.

We cannot expect police officers without clear guidance to do anything other than try to protect us by whatever means are necessary.

I wonder what my friend from California would have said if this beating case we saw out in Los Angeles, if in the process of that beating, that person confessed to having murdered somebody? Should it be admissible? If in the process of that beating, I ask that question of my friend—if, when Rodney King was being beaten, the guy we saw on television; if, in the process of that beating, Rodney King confessed to a murder that he did commit, should Rodney King be convicted under our laws? That is my question.

Mr. HATCH. I do not know, under those circumstances. I really do not.

Mr. BIDEN. That is the problem.

Mr. HATCH. The fact of the matter is, the answer is probably no. But I do not know how the courts would construe that.

Mr. BIDEN. Usually, the courts construe beatings eliciting confessions as a bad thing. And the reason they do that is we have a proposition about self-incrimination in our country. As a matter of fact, not only usually, always do they construe it that way.

But my point is, this would be assuming somebody had committed a murder. If the police beat the confession out of him, and he did commit the murder—he did commit the murder—confessed to it, and that is what convicted him, now, I will not want that guy going free. I would not want that person going free. He did commit a heinous murder, but the only way we were able to convict him is the police beat him up with a hose. Should that person be denied their constitutional rights? Well, my gut tells me no; yet, they should hang him; he did it.

But why is it that we do not allow those kinds of things to be admissible? Why is that? Because it means that we are fearful if you allow that kind of practice, that practice gets used on innocent people as well. And we have a basic fundamental notion in our country that the means must justify the ends; not that the ends justifies the means. That is what this is all about.

I promise you, giving the police the authority to go out and protect us by whatever means is necessary, without any constitutional protection, we would be safer from thugs. I promise you that. There would be no question about that.

Mr. HATCH. Will the Senator yield on that point again?

Mr. BIDEN. I will in a moment.

We concluded in this society that we do not want that to happen. If we said tomorrow the police can use whatever means they want to do away with the drug trade, I promise you things would change. Things would change. They just would go down to where everyone is on the street corner, and without a trial, round them up. There would be fewer drug dealers. We would be safer. But we made a judgment in this country. We do not do things like that—we have a Constitution—because in that net innocent people would get caught.

So I guess the point I am making here is what really is being done by my distinguished friend from South Carolina if he is stretching the means test. He is saying that as long as the result is something that helps, the means you use to arrive at that result is OK. As long as you found something that the guy did is bad, it is OK. It is OK.

Mr. HATCH. Will the Senator yield on that?

Mr. BIDEN. Yes, on the Senator's time.

Mr. HATCH. That is not what the Senator is saying. He is saying the case of Rodney King illustrates that the police were beating him not knowing he murdered somebody. In the process the police learned that he murdered somebody.

Mr. BIDEN. But if they beat him knowing he murdered somebody.

Mr. HATCH. Let us stick with the original example because it is more clear. Either way would be fine. He is not saying that should not be suppressed. We also let some people get off scot-free because they can take the fifth amendment against self-incrimination.

Some say that the reason Oliver North has had a reversal in his case is because of the limited use immunity that was granted, and the tainted evidence that was used against him. He got off, whether what he did was wrong or not.

I uphold those rights, and so does the Senator from South Carolina. All he is saying is do not let them off when the police person has used objectively rea-

sonable belief in the lawfulness of the search obtaining the evidence that convicts that criminal. Do not let him off.

In the case of Rodney King, that will not be objectively reasonable belief that they are obtaining evidence that could be used to convict him. They would be using brutal police force to do it. I think there is a considerable difference between what the distinguished Senator from South Carolina wants here, and the President of the United States and the Attorney General of the United States, and what the Senator from Delaware is characterizing it as.

I know I do not mean to mischaracterize it. I am not taking offense by it. I just want to clarify this matter. The Senator from South Carolina just wants reasonably obtained evidence, under the standard of his amendment to be allowed into evidence, even though the policemen did not have time to get a warrant.

Frankly, that would be an improvement over current law, where people are getting off on technicalities when the policeman acted with reasonable belief that what he or she was doing was lawful. That is all the distinguished Senator from South Carolina is saying. If we would move to that standard, yes, we would sweep more of these criminals off the street, and rightly so.

If we want to move a police brutality standard, I would be the first to stand side by side with the distinguished Senator from Delaware and fight for the rights of those criminals—even though I know they are criminals—because that would be a violation of our basic fundamental rights under the Constitution. But I have to say that where you have a reasonable approach—and that is all he wants—why should that evidence not be admitted? Why should it be suppressed? Why should these drug pushers, murderers, violent criminals be let off? That is what is involved here. It is not as broad as the distinguished Senator from Delaware had indicated.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Chair advises the Senators that Senator THURMOND asked that he be notified when 5 minutes are left on his time. There are now 5 minutes 13 seconds.

The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, I yield myself 3 minutes 30 seconds, and I ask not to be told when I have used that time.

Mr. President, the Senator from Utah has just confirmed the point I was making. The only point I was making by all these examples is that the Senator made it sound like he was against, and I was for, letting all these horrible, guilty people go free. The Senator has just acknowledged that he and the Senator from South Carolina are willing to let horrible, guilty people go free when their constitutional rights are violated. And the fact is that, under the change in the law that would occur under the Thurmond proposal, you would still have thousands of horrible, guilty people going free.

So the debate is not what the Senator from Utah made it sound like in the first 30 minutes of his talking, about whether or not the Senator from Delaware is protecting those horrible, guilty criminals, while he wanted to get those horrible, guilty criminals off the street. That is not the debate.

The debate is on that very small margin of people that would be captured by the change in the law. Is it worth trading off the basic constitutional rights and the jeopardy that innocent people would be placed in, knowing that even if the proposal of the Senator from South Carolina becomes law, there are still horrible, guilty people who are going to go free because we have a Constitution and a basic principle that says that the ends do not justify the means; the means must justify the ends. That is what this country is all about.

Now that we have established that, let us narrow the debate down very closely. The way the Senator from Utah spoke earlier, he noted that the Attorney General said that what I am suggesting would really radically change Leon. I wish the Attorney General would get some new lawyers. Let me read from my proposal: "The judicial officer issuing the warrant was materially misled by information in an affidavit."

That would be one example of detached and neutral. Let me read from the decision in Leon: "Physical evidence seized by officers reasonably relying on a warrant issued by a detached and neutral magistrate.* * *"

Further on in Leon: "Because a search warrant provides the detached scrutiny of a neutral magistrate.* * *"

Biden language: "Detached scrutiny, neutral magistrate, lacking any condition of probable cause."

Let me read from Leon: "If a magistrate or judge in issuing the warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except in reckless disregard of the truth * * * also not apply in cases where the issuing magistrate wholly abandoned his judicial role in the manner condemned in"—it names two cases—going on, again, in Leon: "* * * so lacking in indicia of probable cause to render official belief in its existence entirely and unreasonable." The same language in ours: "* * * lacking indicia of probable cause."

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BIDEN. I yield myself one more minute.

The point is that we took the language from the Leon case.

If what the Attorney General says about my legislation is true, it is also absolutely true of the Supreme Court's decision in the Leon case. You can still argue whether or not the magistrate was detached and neutral. That is the language in the Leon case. The Leon case says—I quote on page 913 and 914 of the Leon case, and page 223 in S. 1241: "If the search and seizure is carried out on a reasonable reliance on a warrant issued by a detached and neutral magistrate." If it is arguable, in my case, it is going to create litigation. It clearly is already going to create litigation. It is in the Leon case. I yield the floor and reserve the remainder of my time.

Mr. THURMOND. Mr. President, I yield 1 minute to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I am willing to let some criminals go free if, for example, their fifth amendment rights are violated or any amendment rights. But I am not willing to let criminals go free when a police officer obtains evidence on an objectively reasonable belief that the search is legal. The question is whether the Senator from Delaware is willing to let those criminals go free, because we certainly differ. Unless he is willing to allow that language brought forth by the distinguished Senator from South Carolina, the President of the United States, and the Justice Department to become law, those criminals are going to go free.

The Constitution, incidentally, does not require the exclusionary rule. This is a judge-made rule. I want to make that point again. All we are asking is that that evidence not be suppressed which is objectively and reasonably obtained.

I yield the floor, Mr. President.

Mr. THURMOND. Mr. President, I yield myself such time as may be required.

Mr. President, the Senator from Delaware refers to provisions which would permit law enforcement officers to knock down doors in bad faith and search our homes. Yet, these provisions are not in my amendment. My amendment does not permit such conduct. Clearly, any officer who chooses to knock down a door, when he had an opportunity to seek a search warrant, would not be acting in objective, reasonable conformance with the fourth amendment. It is totally unreasonable to believe that judges would permit evidence to be admitted at trial which was not obtained in good-faith conformance with the Constitution.

My amendment simply addresses where the evidence will be suppressed when a law enforcement officer acts in objective, reasonable conformance with the fourth amendment. The good-faith exception to warrant the searches is not radical. It has already been applied

for several years by the Federal courts in the 5th and 11th circuits. In addition, the good faith exception does not change, one bit, any individual's rights under the fourth amendment. It does, however, change the rules governing the admissibility of evidence so that criminals will not be set free on mere technicalities when law enforcement officers act in good faith.

Mr. President, the Senator from Delaware has talked about the price we pay for constitutional rights. Yet, the exclusionary rule is not a constitutional right. It is a judicially created remedy. It is a deterrence to improper behavior. My amendment simply states that when an officer acts in good faith, no deterrent purpose is served by excluding evidence.

Therefore, a criminal should not go free on a technicality.

Mr. President, I want to say that my amendment is endorsed by the district attorneys of this Nation. The district attorneys of the whole Nation have endorsed my amendment. They are not for the Biden amendment. The Conference on District Attorneys has endorsed my amendment.

Since yesterday I have also heard from the district attorneys from Fort Myers, FL; Oakland, MI; and Carroll County, IA, and others, and they favor my amendment. They are not in favor of the Biden amendment.

I want to say also that the victims' groups favor my amendment: The Citizens Against Violent Crime, Memories of Victims Everywhere, The Joey Fournier Anti-Crime Committee, Survival Inc., Justice for Murder Victims, North Carolina Victim Assistance Network, Justice for Homicide Victims, the League of Victims and Emphathizers, Citizens for Law and Order.

Mr. President, my amendment is favored by the Attorney General of the United States. It is favored by the National Law Enforcement Council. It is favored by the Federal Criminal Investigators Association. It is favored by the International Narcotics Enforcement Officers Association, the Massachusetts Association of Italian-American Police Officers, the Crime Prevention Officers Association. It is favored by the California Correctional Peace Officers Association. It is favored by the Airborne Law Enforcement Association, the Federal Investigators Association, the Fraternal Order of Police. They affect this whole Nation.

Policemen in the Nation do not favor the Biden amendment. They favor this amendment that I offered here today. The Society of Former Special Agents of the FBI, the National Troopers Coalition. Go out on the highways. The troopers in every State of this Nation have endorsed this amendment that I am offering.

Who endorsed Senator BIDEN's amendment? Who endorsed his amendment? I do not know of a single law enforcement agency in this Nation that has endorsed his amendment.

Mr. President, I want to say now is the time, if we want to quit fooling around with technicalities. Quit tying the hands of the police if they act in good faith. Do not let a criminal loose on technicalities. Let us hold him, try him, convict him, and put him in prison where he ought to be and protect the people of this Nation.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, how much time remains to the Senator from Delaware?

The PRESIDING OFFICER. The time of the Senator from South Carolina has expired. The Senator from Delaware has 3½ minutes.

Mr. BIDEN. Mr. President, let us make it clear what we are talking about is a constitutional right. The court has said that the fourth amendment is violated if you have a search of someone, seize evidence without a search warrant or without probable cause in hot pursuit.

So what we are talking about in changing the definition of what constitutes a violation of the fourth amendment. No one has accused this Supreme Court of being a liberal Supreme Court. The Court has said, as far as the Court has been willing to go, is to say where there is a search warrant and where there is a good-faith mistake made, then it is not a violation of one's fourth amendment right.

What we are talking about, I say to my friend from Utah, is changing the interpretation of what constitutes one's constitutionally protected rights.

I say to my friend from South Carolina, I did not say his amendment allowed bad-faith action. I was referring to the original Justice Department's language, not what the Senator from South Carolina is saying. And, the Senator from South Carolina said something I hope is true about his amendment. He said—obviously I am paraphrasing—when the police have a chance to get a search warrant, they must. If that is what it means, that is a different interpretation. I thought even if they act in good faith, if they had a chance to get a search warrant first, they must. They should.

I want the legislative language to show that that is what was said, because that is different than being able to operate in good faith. If he is really saying that if you are in a position to be able to get a search warrant you should. That means you do not have to get one in hot pursuit. I am not saying you have to have one in hot pursuit. I am not saying you have to have one when you are following someone you think has just committed a crime.

I point out that the 5th circuit and 11th circuit essentially applied the definition of probable cause necessary for a police officer to be able to search someone. That is the essence of those decisions.

I would also point out the American Bar Association says that they oppose the Thurmond amendment. Obviously, if you said to the police—God bless them, their job is a competitive one and we thank God they think that way—but if you said to the police, "Let us eliminate the fourth amendment," I imagine there are a fair number of police who would say, "That is a good idea. If I do not have to fool around with that technicality I can get a lot of people for you."

Who would expect the police not to endorse this? Who would expect the police not to endorse a change in law that said, "By the way, if you think there are drugs in the house you can break the door down"? I imagine the police would endorse that, too. I would if I were a policeman. "My job is tough enough as it is and the Constitution does get in my way." It does. It is a fact. So why would anybody be shocked that the police would endorse this. Of course they would endorse it.

Mr. President, what we are talking about here are constitutional rights that the courts said are violated at this moment. The court says your rights are violated if you do what the Thurmond amendment proposes to do.

The PRESIDING OFFICER. The Senator's time has expired. Under this amendment all time has expired. Any further time will have to come under the bill.

Mr. BIDEN. I thank the Chair.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I say to the Republican leader that I think we are going to be able to work out an agreement on how to stack death penalty amendments. I would invite every Senator who has a death penalty amendment to be here on Monday when we go to consideration.

We will either be able to work out an agreement between Senator THURMOND and myself as to the order we will move on amendments, or possibly a compromise amendment. Senator THURMOND and I could possibly agree to amend it. That is the hope and expectation, and I think it is reasonable.

I hope Senators who have death penalty amendments or wish to speak to that will do that on Monday when we resume consideration. It would be my hope that Senator THURMOND and I would then request that the leadership stack the votes on Tuesday on death

penalty amendments that Senator THURMOND and I and others could agree to on Monday, after having been debated.

MORNING BUSINESS

Mr. BIDEN. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

The PRESIDENT pro tempore. How long does the Senator want the period to run, and how long does he wish Senators to be permitted to speak therein?

Mr. BIDEN. Mr. President, to be allowed to run for 5 minutes, and Senators be permitted to speak therein, 2½ minutes.

The PRESIDENT pro tempore. Without objection, it is so ordered.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,288th day that Terry Anderson has been held captive in Lebanon.

Today is also the eve of the Muslim Eid al-Adha holiday. A traditional opportunity to offer a gesture of good will. This would seem a most appropriate—if long overdue—occasion for those holding Terry Anderson and the other American hostages to release them.

SURFACE TRANSPORTATION EFFICIENCY ACT

The text of S. 1204, the Surface Transportation Efficiency Act, as passed by the Senate on June 19, 1991, is as follows:

S. 1204

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Surface Transportation Efficiency Act of 1991".

SEC. 2. TABLE OF CONTENTS.

SEC. 3. SECRETARY DEFINED.

As used in this Act, the term "Secretary" means the Secretary of Transportation.

TITLE I

PART A—GENERAL PROVISIONS

SEC. 102. DECLARATION OF POLICY.

(a) Subsection 101(b) of title 23, United States Code, is amended to read as follows:

"(b) DECLARATION OF POLICY.—The National Systems of Interstate and Defense Highways is completed. The principal purpose of Federal highway assistance shall henceforth be to improve the efficiency of the existing surface transportation system.

"It is the policy of the United States to facilitate innovation and competition, energy efficiency, productivity and accountability in transportation modes through Federal and State initiative.

"It is the policy of the United States to increase productivity in the transportation sector of the economy through systematic attention to costs and benefits, pursuing the most efficient allocation of costs and the widest distribution of benefits.".

(b) Subsections 101(d) and 101(e) of title 23, United States Code, are hereby repealed.

(c) The Secretary shall distribute copies of the Declaration of Policy contained in this section to each employee of the Federal Highway Administration, and shall ensure that such Declaration of Policy is posted in all offices of the Federal Highway Administration.

SEC. 103. AUTHORIZATION OF APPROPRIATIONS.

(A) REPEAL OF FISCAL YEAR 1993 AUTHORIZATION FOR INTERSTATE CONSTRUCTION.—Section 108(b) of the Federal-Aid Highway Act of 1956 is amended by—

(1) inserting "and" after "1991";

(2) striking the comma after 1992" and inserting in lieu thereof a period; and

(3) striking "and the additional sum of $1,400,000,000 for the fiscal year ending September 30, 1993".

(b) AUTHORIZATIONS.—The following sums are authorized to be appropriated out of the Highway Account of the Highway Trust Fund:

(1) SURFACE TRANSPORTATION PROGRAM.—For the Surface Transportation Program $7,330,000,000 for fiscal year 1992, $7,700,000,000 for fiscal year 1993, $8,260,000,000 for fiscal year 1994, $9,250,000,000 for fiscal year 1995, and $12,260,000,000 for fiscal year 1996.

(2) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—For Congestion Mitigation and Air Quality Improvement $1,000,000,000 per fiscal year for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(3) BRIDGE PROGRAM.—For the Bridge Program $2,350,000,000 for fiscal year 1992, $2,440,000,000 for fiscal year 1993, $2,580,000,000 for fiscal year 1994, $2,820,000,000 for fiscal year 1995, and $3,230,000,000 for fiscal year 1996.

(4) INTERSTATE MAINTENANCE PROGRAM.—For resurfacing, restoring and rehabilitating the National System of Interstate and Defense Highways, $2,530,000,000 for fiscal year 1992, $2,620,000,000 for fiscal year 1993, $2,770,000,000 for fiscal year 1994, $3,020,000,000 for fiscal year 1995, and $3,250,000,000 for fiscal year 1996.

(5) INTERSTATE CONSTRUCTION PROGRAM.—For construction to complete the Interstate System, $1,800,000,000 for fiscal year 1993, 1994, 1995, and 1996: *Provided*, That section 102(c) of the Federal-Aid Highway Act of 1987, regarding minimum apportionment, is hereby repealed: *And provided further*, That such sums shall be obligated as if authorized by section 108(b) of the Federal-Aid Highway Act of 1956.

(6) INTERSTATE SUBSTITUTION PROGRAM.—For the Interstate Substitution Program for projects under highway or transit assistance programs $240,000,000 for each of fiscal years 1992, 1993, 1994, and 1995: *Provided*, That such sum shall be obligated as if authorized by section 103(e)(4)(G) of title 23, United States Code, for highway assistance programs.

(7) FEDERAL LANDS HIGHWAY PROGRAM.—

(A) For Indian reservation roads $200,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(B) For public lands highways $200,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(C) For parkways and park highways $120,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(8) TERRITORIAL HIGHWAY PROGRAM.—For the Territorial Highway Program $15,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(9) NATIONAL MAGNETIC LEVITATION DESIGN PROGRAM.—For the National Magnetic Levitation Design Program $50,000,000 for fiscal year 1992, $75,000,000 for fiscal year 1993, $125,000,000 for fiscal year 1994, $250,000,000 for fiscal year 1995, and $250,000,000 for fiscal year 1996.

(10) FEDERAL HIGHWAY ADMINISTRATION RESEARCH PROGRAMS.—For the purpose of carrying out research as authorized by section 307, the amount of $120,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996: *Provided*, That such amount shall be made available from within the amount of the deduction authorized pursuant to section 104(a) of title 23, United States Code.

(11) UNIVERSITY TRANSPORTATION CENTERS PROGRAM.—For carrying out the University Transportation Centers Program pursuant to the Urban Mass Transportation Act of 1964, as amended, $5,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(12) HIGHWAY USE TAX EVASION PROJECTS.—(A) For highway use tax evasion projects $5,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996: *Provided*, That these sums shall be available until expended and may be allocated to the Internal Revenue Service of States at the discretion of the Secretary: *Provided further*, That these funds shall be used only to expand efforts to enhance motor fuel tax enforcement, fund additional Internal Revenue Service staff (only for purposes under this paragraph), supplement motor fuel tax examination and criminal investigation, develop automated data processing tolls, evaluate and implement registration and reporting requirements, reimburse State expenses that supplement existing fuel tax compliance efforts, and analyze and implement programs to reduce tax evasion associated with other highway use taxes.

(B) The Secretary shall report on October 1 and April 1 of each year to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives on the expenditure of all funds under this paragraph, including expenses for the hiring of additional staff by any Federal agency and any expenditures for outside consultants.

(13) SAFETY BELT AND MOTORCYCLE HELMET USE.—For the purpose of carrying out programs under section 153 of title 23, United States Code, $45,000,000 for fiscal year 1992, $30,000,000 for fiscal year 1993, and $25,000,000 for fiscal year 1994.

SEC. 104. OBLIGATION CEILING.

(a) GENERAL LIMITATION.—Notwithstanding any other provision of law, the total of all obligations for Federal-aid highway programs or State allocations made pursuant to section 143 shall not exceed—

(1) $15,480,000,000 for fiscal year 1992;

(2) $16,721,000,000 for fiscal year 1993;

(3) $18,726,000,000 for fiscal year 1994;

(4) $20,687,000,000 for fiscal year 1995; and

(5) $23,467,000,000 for fiscal year 1996:

Provided, That limitations under this section shall not apply to obligations for emergency

relief pursuant to section 125 and obligations for minimum allocation pursuant to section 157.

(b) DISTRIBUTION OF OBLIGATION AUTHORITY.—For each of fiscal years 1992, 1993, 1994, 1995 and 1996, the Secretary shall distribute the limitation imposed by subsection (a) by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways which are apportioned or allocated to each State for such fiscal year bears to the total of the sums authorized to be appropriated for Federal-aid highways which are apportioned or allocated to all the States for such fiscal year.

(c) LIMITATION ON OBLIGATION AUTHORITY.—During the period October 1 through December 31 of each fiscal year 1992, 1993, 1994, 1995, and 1996 no State shall obligate more than 35 per centum of the amount distributed to that State under subsection (b) for that fiscal year, and the total of all State obligations during the period shall not exceed 25 per centum of the total amount distributed to all States under subsection (b) for that fiscal year.

(d) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Notwithstanding subsections (b) and (c), the Secretary shall—

(1) provide all States with authority sufficient to prevent unintended lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned or allocated to a State:

(2) after August 1 of each of fiscal years 1992, 1993, 1994, 1995 and 1996, revise a distribution of funds made available under subsection (b) for that fiscal year if a State will not obligate the amount distributed to it during that fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during the fiscal year, first in accordance with paragraph (4) of this subsection and, to the extent further obligation authority is available after distribution of the maximum permitted under paragraph (4), then by distributing the remainder giving priority to those States having large unobligated balances of funds apportioned under section 104 and section 144 of title 23, United States Code; and

(3) not distribute amounts authorized for administrative expenses, the Federal lands highways program, and the National Magnetic Levitation Design Program.

(4)(A) Subject to subparagraph (B), a State which after August 1 and on or before September 30 of fiscal year 1992, 1993, 1994, 1995, or 1996, obligates the amount distributed to such State in such fiscal year under subsection (b) may obligate for Federal-aid highways and highway safety construction on or before September 30 of such fiscal year an additional amount not to exceed 5 per centum of the aggregate amount of funds apportioned or allocated to such State—

(i) under sections 104 and 144; and

(ii) for highway assistance projects under section 103(e)(4), which are not obligated on the date such State completes obligation of the amount so distributed.

(B) LIMITATION.—During the period August 2 through September 30 of each of fiscal years 1992 through 1996, the aggregate amount which may be obligated by all States pursuant to subparagraph (A) shall not exceed 2.5 per centum of the aggregate amount of funds apportioned or allocated to all States—

(i) under sections 104 and 144, and

(ii) for highway assistance projects under section 103(e)(4), which would not be obligated in such fiscal year if the total amount of obligational authority provided by subsection (a) for such fiscal year were utilized.

(C) LIMITATION ON APPLICABILITY.—

(i) Subparagraph (A) shall not apply in a fiscal year to any State which on or after August 1 of that fiscal year has the amount distributed to such State under subsection (b) for such fiscal year reduced under paragraph (d)(2).

(ii) This paragraph does not create obligation authority in addition to that provided by subsection (a), but concerns only redistribution of obligation authority.

SEC. 105. UNOBLIGATED BALANCES.

Unobligated balances of funds apportioned for the primary, secondary and urban systems and the railway-highway crossing and hazard elimination programs may be obligated for the Surface Transportation Program as if they had been apportioned for that program.

SEC. 106. SURFACE TRANSPORTATION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Title 23, United States Code, is amended by adding the following new section:

"§ 133. Surface Transportation Program

"The Secretary shall establish a Surface Transportation Program in accordance with this section.

"(a) ELIGIBILITY.—Projects eligible under the Surface Transportation program shall include—

"(1) construction, reconstruction, rehabilitation, resurfacing, restoration, mitigation of damage to wildlife, habitat, and ecosystems caused by a transportation project funded under this title, and operational improvements for highways (including Interstate highways) and bridges (including bridges on public roads of all functional classifications), including any such construction or reconstruction necessary to accommodate other transportation modes, and including the seismic retrofit, painting of and application of calcium magnesium acetate on bridges and other elevated structures;

"(2) capital costs for mass transit, passenger rail (including high speed rail), and operating cost for passenger rail for States without Amtrak service as of the date of enactment of this Act, publicly owned intra- or inter-city bus terminals and facilities, and magnetic levitation systems, including expenditures on rights of way and associated facilities, and expenses for contracted passenger rail or magnetic levitation service provided by public or private carriers;

"(3) carpool projects and fringe and corridor parking facilities and programs, and bicycle facilities and programs;

"(4) surface transportation safety improvements and programs, including highway safety improvement projects, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings;

"(5) surface transportation research and development programs;

"(6) capital and operating costs for traffic monitoring, management and control facilities and programs;

"(7) surface transportation planning programs;

"(8) transportation enhancement activities as defined in section 101;

"(9) transportation control measures listed in section 108(f) of the Clean Air Act, as amended;

"(10) incremental costs attributable to the use of alternative fuels by school buses, including purchase and installation of alternative fuel refueling facilities to be used primarily for school bus refueling and conversion of school buses to make them capable of using only an alternative fuel (except that diesel school buses may be converted to run on a combination of diesel and natural gas): *Provided*, That any conversion using funds authorized by this paragraph comply with the warranty and safety requirements for alternative fuel conversions contained in section 247 of the Clean Air Act Amendments of 1990: *Provided further*, That for purposes of this paragraph, 'alternative fuels' means methanol, ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, ethanol, or other alcohol with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; and electricity; and

"(11) any other purpose approved by the Secretary.

Provided, That projects other than those described in paragraphs (3) and (4) may not be undertaken on roads functionally classified as local or rural minor collector, unless such roads are on a Federal-aid highway system as of January 1, 1991, except as approved by the Secretary. Surface Transportation Program funds may be used—

"(A) as part of a highway construction project, or as a separate effort, to mitigate wetland loss related to highway construction; or

"(B) to contribute to statewide efforts to conserve and restore wetlands adversely affected by highway construction

if such efforts comply with all applicable requirements of and regulations under Federal law, including but not limited to the National Environmental Policy Act, the Endangered Species Act, and the Federal Water Pollution Control Act. These efforts may include the development of statewide wetland conservation plans, and other State or regional efforts to conserve and restore wetlands. Contributions toward these efforts may occur in advance of specific highway construction activity only if the State has a transportation planning process that precludes the use of such efforts to influence the environmental assessment of the highway construction project, the decision relative to the need to construct the highway project, or the selection of the project design or location.

"(b) GENERAL REQUIREMENTS.—

"(1)(A) At least 75 per centum of apportionments and obligation authority made available to a State for the Surface Transportation Program in any year shall be divided between—

"(i) the metropolitan areas of the State with a metropolitan statistical area population of over two hundred and fifty thousand; and

"(ii) the other areas of the State;

in proportion to their relative share of the State's population. The remaining 25 per centum of funds may be programmed in any area of the State.

"(B) Notwithstanding the requirements of subparagraph (A), in any State where—

"(i) greater than 80 per centum of the population of such State is located in one or more metropolitan statistical areas and greater than 80 per centum of the land area of such State is owned by the United States

only 35 per centum of Surface Transportation Program funds shall be divided based on the formula provided in subparagraph (A). The remaining 65 per centum of funds may be programmed in any area of the State.

"(C) The requirements of subparagraph (A) shall not apply to any State which is non-

contiguous with the continental United States.

"(2) Programming and expenditure of funds for projects in metropolitan areas shall be consistent with the requirements of section 134, regarding metropolitan planning.

"(3) Programming and expenditure of funds for projects in non-metropolitan areas shall be consistent with the provisions of section 135, regarding statewide planning.

"(4) Of the apportionments made available to a State under this section, each State must assure that no less than 8 per centum of such funds are programmed for transportation enhancement activities, as defined in section 101.

"(5) In the case where a State constructs a facility under this program with a Federal share of 80 per centum and later converts the facility to operation such that the project would originally have been undertaken with a Federal share of 75 per centum, the State shall repay to the United States, with interest, the amount of the difference in the cost to the United States.

"(6) Each State shall assure that funds attributed to metropolitan and nonattainment areas pursuant to paragraph (1) shall be divided among such areas in a fair and equitable manner based on the relative population of such areas, except that the State may divide funds based on other factors if the State and the relevant metropolitan planning organizations jointly apply to the Secretary for the permission to do so and the Secretary grants the request.

"(7) Each State shall assure that funds attributed to attainment and non-metropolitan areas pursuant to paragraph (1) shall be distributed fairly and equitably among those areas.

"(c) ADMINISTRATION.—

"(1) If the Secretary determines that a State or local government has failed to comply substantially with any provision of this section, the Secretary shall notify the State, that, if it fails to take corrective action within sixty days from the receipt of the notification, the Secretary will withhold future payments under this section until the Secretary is satisfied that appropriate corrective action has been taken.

"(2) The Governor of each State shall certify prior to the beginning of each fiscal year that the State will meet all the requirements of this section and shall notify the Secretary of the amount of obligations expected to be incurred for Surface Transportation Program projects during the fiscal year: *Provided*, That the State may request adjustment to the obligation amounts later in the fiscal year. Acceptance of the notification and certification shall be deemed a contractual obligation of the United States for the payment of the Surface Transportation Program funds expected to be obligated by the State in that fiscal year for projects not subject to review by the Secretary.

"(3) Projects must be designed, constructed, operated and maintained in accordance with State laws, regulations, directives, safety standards, design standards and construction standards.

"(4) Any State may request that the Secretary no longer review and approve design and construction standards for any project other than a project on an Interstate highway or other multi-lane limited access control highways, except as provided in section 102(b), regarding resurfacing projects. After receiving any such notification the Secretary shall undertake project review as requested by the State.

"(5) The Secretary shall make payments to a State of costs incurred by it for the Surface Transportation program. Payments shall not exceed the Federal share of costs incurred as of the date the State requests payments.

"(d) For purposes of paragraph (1)(A)(i) and paragraph (6) of subsection (b), the Secretary shall use estimates prepared by the Secretary of Commerce when determining population figures.".

(b) APPORTIONMENT.—Section 104(b) of title 23, United States Code, is amended by—

(1) amending paragraph (1) to read as follows:

"(1) SURFACE TRANSPORTATION PROGRAM.—For the Surface Transportation Program, in a manner such that—

"(A) a State's per centum share of all funds allocated or apportioned pursuant to this title for fiscal year 1992 and any fiscal year thereafter, excluding funds apportioned or allocated for the Interstate Construction, Interstate Substitute, Federal Lands Highways, Congestion Mitigation and Air Quality Improvement, Minimum Allocation, National Magnetic Levitation Design, and Emergency Relief programs;

shall be equal to—

"(B) such State's per centum share of all apportionments and allocations received under this title for fiscal years 1987, 1988, 1989, 1990, and 1991, excluding apportionments and allocations received for the Interstate Construction, Interstate Substitute, Federal Lands Highways and Emergency Relief Programs, all apportionments and allocations received for demonstration projects, and the portion of allocations received pursuant to section 157, regarding minimum allocation, that is attributable to apportionments made under the Interstate Construction and Interstate Substitute programs in such years: *Provided*, That, in calculating a State's per centum share under this subparagraph for the purpose of making apportionments for fiscal years 1992, 1993, 1994, 1995, and 1996, each State shall be deemed to have received one-half of 1 per centum of all funds apportioned for the Interstate Construction Program in fiscal years 1987, 1988, 1989, 1990, and 1991: *And provided further*, That in any fiscal year no State shall receive a percentage of total apportionments and allocations that is less than 70 per centum of its percentage of total apportionments and allocations for fiscal years 1987, 1988, 1989, 1990, and 1991, except for those States that receive an apportionment for interstate construction of more than $50,000,000 for fiscal year 1992.

"(C) ENERGY CONSERVATION, CONGESTION MITIGATION, AND CLEAN AIR BONUS.—This paragraph shall apply beginning in fiscal year 1993 and shall apply only to those States with one or more metropolitan statistical areas with a population of two hundred fifty thousand or more. The amount of each such State's Surface Transportation Program funds determined pursuant to section 133(b)(1)(A)(i) shall be reduced by multiplying such amount by a factor of 0.9 if the State's vehicle miles of travel per capita is more than 110 per centum of its vehicle miles of travel in the base year. Reductions in apportionments made pursuant to the preceding sentence shall be placed in a Surface Transportation Bonus Fund and shall be used, to the extent such funds are available, to increase the amount of Surface Transportation Program funds determined pursuant to section 133(b)(1)(A)(i) by a factor of 1.1 for each State affected by this paragraph, if such State's vehicle miles of travel per capita is less than 90 per centum of its vehicle miles of travel per capita in the base year. Funds remaining thereafter in the Surface Transportation Bonus Fund, if any, shall be apportioned to the States affected by this paragraph in proportion to each State's share of Surface Transportation Program funds determined pursuant to section 133(b)(1)(A)(i) among all such States prior to any adjustments made pursuant to this paragraph. Funds so apportioned shall be treated as funds pursuant to section 133(b)(1)(A)(i) area treated. For the purposes of this paragraph, the term 'base year' shall mean the year 1990 for fiscal years 1993, 1994, and 1995, and shall mean the year 1995 for fiscal years 1996 and all subsequent fiscal years.

"(D) For purposes of subparagraph (C), the Secretary shall use estimates prepared by the Secretary of Commerce when determining population figures.".

(2) striking "upon the Federal-aid systems" and inserting in lieu thereof "upon the Surface Transportation Program, the Congestion Mitigation and Air Quality Improvement Program, and the Interstate System";

(3) striking "paragraphs (4) and (5)" and inserting in lieu thereof "subparagraph (5)(A)"; and

(4) striking "and sections 118(c) and 307(d)" and inserting in lieu thereof "and section 307".

(c) FEDERAL SHARE.—Section 120(a) of title 23, United States Code, is amended by striking "Subject to the provisions of subsection (d) of this section, the" and inserting in lieu thereof "The"; by striking ", primary, secondary, or urban funds, on the Federal-aid primary system, the Federal-aid secondary system, and the Federal-aid urban system" and inserting instead "Surface Transportation Program funds"; and by inserting "for capital projects that add capacity available to single occupant vehicles, except where the project consists of a high occupancy vehicle facility available to single occupant vehicles at other than peak travel times, and 80 per centum of the cost of construction for other projects", in two places after the words "cost of construction".

(d) GUIDANCE.—The Secretary shall develop and make available to the States guidance on how to determine what portion of any project under section 133 of title 23, United States Code, is eligible for an 80 per centum Federal share.

(e) CONFORMING AMENDMENTS.—The analysis of title 23, United States Code, is amended by striking:

"133. [Repealed Public Law 90-495]."

and inserting in lieu thereof:

"133. Surface Transportation Program.".

SEC. 107. CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Section 149 of title 23, United States Code, is amended to read as follows:

"§ 149. Congestion Mitigation and Air Quality Improvement Program

"The Secretary shall establish a congestion mitigation and air quality improvement program pursuant to the requirements of this section.

"(a) ELIGIBLE PROJECTS.—A project may be funded under the congestion mitigation and air quality improvement program—

"(1) only if guidance issued by the Environmental Protection Agency pursuant to section 108(f) of the Clean Air Act, as amended, shows to the satisfaction of the Secretary, after consultation with the Administrator of the Environmental Protection Agency, that the project is likely to contribute to the attainment of any national ambient air quality standard, except in the case where such

guidance is not available, only if the project is described in section 108(f) of the Clean Air Act, as amended;

"(2) the project is listed in a State implementation plan that has been approved pursuant to the Clean Air Act, as amended and the project will have air quality benefits; or

"(3) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the project is likely to contribute to the attainment of any national ambient air quality standard, whether through reductions in vehicle miles travelled, fuel consumption, or through other factors; and

"(4) pursuant to this subsection projects which research, develop and test technologies to control highway related emissions which contribute to the nonattainment of any ambient air quality standard or the impairment of visibility within an urbanized area within the State shall be deemed to be eligible projects; and

only if the project does not result in the construction of new capacity available to single occupant vehicles, except where the project consists of a high occupancy vehicle facility available to single occupant vehicles at other than peak travel times.

"(b) DISTRIBUTION OF FUNDS.—Apportionments made under this section shall be made available in nonattainment areas as defined pursuant to the Clean Air Act, as amended, with urbanized area populations over fifty thousand in proportion to the relative share of weighted nonattainment area population as calculated in section 104(b)(2) within the State: *Provided*, That each State that contains a nonattainment area shall receive a minimum apportionment of one-quarter of 1 per centum of the apportionment made under this section: *Provided further*, That the Secretary shall use estimates prepared by the Secretary of Commerce when determining population figures. Selection of projects for such funds shall be carried out by the metropolitan planning organization for each such area in accordance with the provisions of section 134 of title 23, United States Code.

"(c) FEDERAL SHARE.—The Federal Share payable for a project under this section shall not exceed 80 per centum of the cost of the project.".

(b) APPORTIONMENT.—Section 104(b)(2) is amended to read as follows:

"(2) FOR THE CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—In the ratio which the weighted nonattainment area population of each State bears to the total weighted nonattainment area population of all States, where weighted nonattainment area population shall be calculated by multiplying the population of any nonattainment areas within any State that is in nonattainment for ozone by a factor of—

"(A) 1.0 if the area is classified as a marginal nonattainment area;

"(B) 1.1 if the area is classified as a moderate nonattainment area;

"(C) 1.2 if the area is classified as a serious nonattainment area;

"(D) 1.3 if the area is classified as a severe nonattainment area;

"(E) 1.4 if the area is classified as an extreme nonattainment area;

where the classification of nonattainment areas is that used in the Clean Air Act, as amended, and by further multiplying the population of any non-attainment area by a factor of 1.2 is such area is in nonattainment for carbon monoxide.". Notwithstanding any other provision of this section, any State which is subject to air pollution control measures pursuant to section 184 (related to Interstate Ozone Air Pollution) or section 176A (related to Interstate Transport Commissions) of the Clean Air Act Amendments of 1990 shall receive a minimum of one-tenth of 1 per centum of the total funds apportioned under this section.".

(c) CONFORMING AMENDMENTS.—The analysis of chapter 1 of title 23, United States Code, is amended by striking:

"Sec. 149. Truck lanes."

and inserting instead:

"Sec. 149. Congestion Mitigation and Air Quality Improvement Program.".

SEC. 108. BRIDGE PROGRAM.

(a) FEDERAL SHARE.—Section 144(f) of title 23, United States Code, is amended to read as follows:

"(f) The Federal share payable for any project undertaken under this subsection shall be 80 per centum, except for any costs attributable to the expansion of the capacity of any bridge or the construction of any new bridge where such new capacity or new bridge is primarily available to single occupant vehicles, in which case the Federal share payable shall be 75 per centum. In the case where a State constructs a bridge or portion thereof not primarily available to single occupant vehicles pursuant to this section, and later converts the bridge or portion thereof to be primarily available to single occupant vehicles, the State shall repay to the United States, with interest, the amount of the additional cost borne by the United States that would have been borne by the State had the bridge or portion thereof been originally available primarily to single occupant vehicles.".

(b) NEW CAPACITY GUIDANCE.—The Secretary shall develop and make available to the States criteria for determining what share of any project undertaken pursuant to section 144 of title 23, United States Code, is attributable to the expansion of the capacity of a bridge where the new capacity is available to single occupant vehicles.

(c) BRIDGE PAINTING, SEISMIC RETROFIT, AND MAINTENANCE.—Section 144(e) of title 23, United States Code, is amended by adding at the end "Funds apportioned pursuant to this subsection shall be available for the painting and seismic retrofit of, or application of calcium magnesium acetate on, any bridge eligible for assistance under this section.

(d) REPEAL OF DISCRETIONARY BRIDGE PROGRAM.—Section 144(g) of title 23, United States Code, is repealed.

(e) LEVEL OF SERVICE CRITERIA.—The Secretary shall, by January 1, 1992, in consultation with the States, establish level of service criteria for the Bridge Program: *Provided*, That, notwithstanding the requirements of such criteria or of section 144 of title 23, United States Code, up to 35 per centum of bridge program funds made available to a State in any fiscal year shall be available for expenditure on any public bridge, provided that such expenditure conforms with the bridge management system adopted by the State.

(f) CONFORMING AMENDMENTS.—

(1) The analysis of chapter 1 of title 23, United States Code, is amended by striking:

"Sec. 144. Highway bridge replacement and rehabilitation program."

and inserting in lieu thereof:

"Sec. 144. Bridge Program."

(2) Section 144 of title 23, United States Code, is amended as follows:

(A) The title is amended to read:

"§ 144. Bridge Program".

(B) Subsection (b) is repealed; and subsection (c) is amended by striking", other than those on any Federal-aid system," and by striking "on and off the Federal-aid system;".

(C) Subsection (e) is amended by striking "(1) Federal-aid system bridges eligible for replacement, (2) Federal-aid system bridges eligible for rehabilitation, (3) off-system bridges eligible for replacement, and (4) off-system bridges eligible for rehabilitation." and inserting instead "(1) Bridges categorized for rehabilitation and (2) bridges categorized for replacement."; and (2) by striking "on the Federal-aid primary system" and inserting instead "under the Surface Transportation Program".

(g) TRANSFER OF FUNDS.—Up to sixty percent of the apportionment of Bridge Program funds are eligible to be transferred to either the Surface Transportation Program or the Interstate Maintenance Program if apportionment of bridge funds exceed bridge funds obligated in the previous year by more than 50 percent. These transferred funds may be programmed in any area of the State and are not subject to the requirements of distribution specified in section 133(b)(1) of title 23, United States Code.

SEC. 109. INTERSTATE MAINTENANCE PROGRAM.

(a) LIMITATION ON NEW CAPACITY.—Section 119(a) of title 23, United States Code, is amended by inserting after the end of the first sentence: "Notwithstanding any other provision of this title, the portion of the cost of any project undertaken pursuant to this section that is attributable to the expansion of the capacity of any Interstate highway or bridge, where such new capacity consists of one or more new travel lanes that are not high-occupancy vehicle lanes or auxiliary lanes, shall not be eligible for funding under this section.".

(b) ADEQUATE MAINTENANCE OF THE INTERSTATE SYSTEM.—Section 119(f)(1) of title 23, United States Code, is amended by inserting at the end of the paragraph "The Secretary must find that the State is adequately maintaining the Interstate System to accept such a certification.".

(c) NON-FEDERAL MATCH REQUIREMENT.—

(1) Section 119(a) of title 23, United States Code, is amended by striking "section 120(c)" and inserting in lieu thereof "section 120(d)".

(2) Section 120(d) of title 23, United States Code, is amended to read as follows:

"(d) INTERSTATE MAINTENANCE.—The Federal share payable on account of any project undertaken for the maintenance of Interstate highways under the provisions of section 119 shall either—

"(1) not exceed 80 per centum of the cost of construction, except that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments, exceeding 5 per centum of the total area of all lands therein, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area; or

"(2) not exceed 80 per centum of the cost of construction, except that in the case of any State containing nontaxable Indian lands, individual and tribal, public domain lands (both reserved and unreserved), national forests, and national parks and monuments, the Federal share shall be increased by a percentage of the remaining cost equal to the percentage of the area of all such lands in such State is of its total area, except that

the Federal share payable on any project shall not exceed 95 per centum of the total cost of the project.

In any case where a State elects to have the Federal share as provided in paragraph (2), the State must enter into an agreement with the Secretary covering a period of not less than one year, requiring the State to use solely for purposes eligible under this title (other than paying its share of projects undertaken pursuant to this title) during the period covered by the agreement the difference between the State's share as provided in paragraph (2) and what its State's share would be if it elected to pay the share provided in paragraph (1) for all projects subject to the agreement.".

(d) GUIDANCE TO THE STATES.—The Secretary shall develop and make available to the States criteria for determining—

(1) what share of any project funded under section 119 of title 23, United States Code, is attributable to the expansion of the capacity of an Interstate Highway or bridge; and

(2) what constitutes adequate maintenance of the Interstate System for the purposes of section 119(f)(1) of title 23, United States Code.

(e) NON-CHARGEABLE SEGMENTS.—Section 104(b)(5)(B) of title 23, United States Code, is amended by adding "and routes on the Interstate system designated under section 139(a) of this title before January 1, 1984" after the phrase "under sections 103 and 139(c) of this title" each of the two times it appears in the first sentence.

(f) CONFORMING AMENDMENTS.—

(1) NEW TITLE.—The title of section 119 of title 23, United States Code, is amended to read:

"§Sec. 119. Interstate Maintenance Program";

(2) ANALYSIS.—The analysis for chapter 1 of title 23, United States Code, is amended by striking:

"Sec. 119. Interstate System Resurfacing."

and inserting in lieu thereof:

"Sec. 119. Interstate Maintenance Program.".

(3) Section 119 of title 23, United States Code, is amended—

(A) by striking out subsection (c), with regard to reconstruction, and inserting in lieu thereof the following new subsection:

"(c) Activities authorized in subsection (a) may include the reconstruction of bridges, interchanges and over crossings along existing Interstate routes, including the acquisition of right-of-way where necessary, but shall not include the construction of new travel lanes other than high occupancy vehicle lanes or auxiliary lanes.";

(B) by striking out subsection (e), with regard to toll facilities;

(C) by striking out, in subsection (a), ", rehabilitating, and reconstructing" and inserting in lieu thereof "and rehabilitating"; and

(D) in subsection (f)—

(i) by striking "PRIMARY SYSTEM" from the title and inserting in lieu thereof "SURFACE TRANSPORTATION PROGRAM"; and

(ii) by striking "rehabilitating, or reconstructing" and inserting in lieu thereof "or rehabilitating".

(4) APPORTIONMENT.—Section 104(b)(5)(B) of title 23, United States Code, is amended by striking "rehabilitating, and reconstructing" and inserting instead "and rehabilitating".

SEC. 110. INTERSTATE CONSTRUCTION PROGRAM.

(a) MASSACHUSETTS.—Paragraph 104(b)(5)(A) of title 23, United States Code, is amended by striking "upon the approval by Congress, the Secretary shall use the Federal share of such approval estimates in making apportionments for the fiscal year 1993" and inserting in lieu thereof:

"The Secretary shall use the Federal share of the 1991 Interstate Cost Estimate, adjusted to reflect (i) all previous credits, apportionments of Interstate construction funds and lapses of previous apportionments of interstate construction funds, (ii) previous withdrawals of interstate segments, (iii) previous allocations of Interstate discretionary funds, and (iv) transfers of Interstate construction funds, to make apportionments for fiscal years 1993, 1994, 1995 and 1996 in the ratio in which the Federal share of the estimated cost of completing the Interstate System in a State bears to the Federal share of the sum of the estimated cost of completing the Interstate System in all of the States, except Massachusetts: *Provided*, That Massachusetts shall be apportioned $100,000,000 for the fiscal years 1993, $800,000,000 for the fiscal year 1994, $800,000,000 for the fiscal year 1995, and $850,000,000 for the fiscal year 1996.".

(b) CONFORMING AMENDMENTS.—Paragraph 104(b)(5)(A) of title 23, United States Code, is further amended by striking "1960 through 1990" the two places it appears and inserting instead "1960 through 1996"; and by striking "1967 through 1990" and inserting instead "1967 through 1996". Unobligated balances of funds allocated for Forest Highways may be obligated for Public Lands highways.

SEC. 111. FEDERAL LANDS HIGHWAYS PROGRAM.

(a) ALLOCATIONS.—Section 202 of title 23, United States Code, is amended as follows:

(1) Subsection (c) is amended by inserting at the end "The secretary shall allocate 66 per centum of the remainder of the authorization for public lands highways for each fiscal year as is provided in section 134 of the Federal-Aid Highway Act of 1987."; and by inserting after "allocate" the words "34 per centum of".

(2) Subsection (a) is repealed and the following subsections are relettered accordingly.

(b) PROJECTS.—Section 204 of title 23, United States Code, is amended as follows:

(1) Subsection (b) is amended (A) by striking "construction and improvements thereof" and inserting in lieu thereof "planning, research, engineering and construction thereof"; and (B) by inserting at the end "Funds available for each class of Federal lands highways shall be available for any kind of transportation project eligible for assistance under this title that is within or adjacent to or provides access to the areas served by the particular class of Federal lands highways."; and by striking "forest highways and".

(2) Subsection (a) is amended by striking "forest highways,"; and by inserting at the end "Notwithstanding any other provision of this title, no public lands highway project may be undertaken in any State pursuant to this section unless the State concurs in the selection and planning of the project.".

(3) Subsection (c) is amended by striking "on a Federal aid system and inserting in lieu thereof "eligible for funds apportioned under section 104 or section 144 of this title".

(4) Section 204 of title 23, United States Code, is amended by striking subsection (h) and inserting instead:

"(h) Funds available for each class of Federal lands highways may be available for the following—

"(1) transportation planning for tourism and recreational travel including the National Forest Scenic Byways Program, Bureau of Land Management Back Country Byways Program, National Trail System Program, and other similar Federal programs that benefit recreational development;

"(2) adjacent vehicular parking areas;

"(3) interpretive signage;

"(4) acquisition of necessary scenic easements and scenic or historic sites;

"(5) provision for pedestrians and bicycles;

"(6) construction and reconstruction of roadside rest areas including sanitary and water facilities; and

"(7) other appropriate public road facilities such as visitor centers as determined by the Secretary.

"(i) The Secretary shall transfer to the Secretary of Interior from the appropriation for public land highways amounts as may be needed to cover necessary administrative costs of the Bureau of Land Management in connection with public lands highways.".

(5) Section 205(c) is amended by striking "$15,000" in four places and inserting in lieu thereof "$50,000".

(c) REHABILITATION.—Of the funds authorized to be appropriated pursuant to section 103(b)(7)(B) of this Act, an amount equal to $20,000,000 shall be available for each of fiscal years 1992, 1993, 1994, 1995, and 1996 for continued rehabilitation of federally-owned highways under the Federal lands highway program of title 23, United States Code. Such funds shall remain available until expended.

(d) INDIAN RESERVATION ROADS.—Notwithstanding any other provision of law, funds allocated for Indian reservation roads may be used for the purpose of funding road projects on roads of tribally controlled postsecondary vocational institutions.

(e) INDIAN RESERVATION ROADS PLANNING.—Two percent of funds allocated for Indian reservation roads shall be allocated to those Indian tribal governments applying for transportation planning pursuant to the provisions of the Indian Self Determination and Education Assistance Act. The Indian tribal government, in cooperation with the Secretary of the Interior, and, as may be appropriate, with a State, local government, or Metropolitan Planning Organization, shall develop a transportation improvement program, that includes all Indian reservation road projects proposed for funding. Projects shall be selected by the Indian tribal government from the transportation improvement program and shall be subject to the approval of the Secretary of the Interior and the Secretary.

(f) CONFORMING AMENDMENTS.—Section 203 of title 23, United States Code, is amended by striking "forest highways" in two places.

SEC. 112. TOLL FACILITIES.

(a) REPEAL OF NATIONAL POLICY.—Section 301 of title 23, United States Code, is hereby repealed. The analysis of chapter 3 of such title is amended by striking out the item relating to section 301.

(b) NEW REQUIREMENTS.—Section 129 of title 23, United States Code, is amended to read as follows:

"§ 129. Toll facilities

"(a) PROHIBITION.—Tolls may not be imposed on any existing free interstate highway.

"(b) FEDERAL SHARE PAYABLE.—Except as provided in subsection (e), the Federal share payable for any project under this section shall not exceed 35 per centum of the cost of the project for construction of new toll facilities: *Provided*, That, for the purposes of subsection (d), the Federal share may be increased by a percentage of the remaining cost that is equal to the percentage that unappropriated and unreserved public lands and

nontaxable Indian lands, individual and tribal, exceeding 5 percent of the total area of all lands therein, in a State are of its total area, and shall not exceed 80 per centum of the cost of the project for rehabilitation of existing toll facilities or conversion of existing free facilities to toll facilities: *Provided*, That for the purposes of subsection (d) the Federal share may be increased in accordance with the provisions of section 120(a), as amended. A State may loan all or part Federal funds made available pursuant to this section to a public agency constructing a toll facility: *Provided*, That such loan may be made only after all Federal environmental requirements have been complied with and permits obtained. The amount loaned shall be subordinated to other debt financing for the facility except for loans made by the State or any other public agency to the agency constructing the facility. Funds loaned pursuant to this section may be obligated for projects eligible under this section. The repayment of any such loan shall commence not less than five years after the facility has opened to traffic. Any such loan shall bear interest at the average rate the State's pooled investment fund earned in the 52 weeks preceding the start of repayment. The term of any such loan shall not exceed 30 years from the time the loan was obligated. Amounts repaid to a State from any loan made under this section may be obligated for any purpose eligible under this title. The Governor of each State making a loan pursuant to this section shall establish procedures and guidelines for making such loans.

"(c) CONSTRUCTION OR CONVERSION OF FACILITIES.—Except as otherwise provided in this section, Federal funds to carry out this title may not be obligated on toll facilities or to convert free facilities to toll facilities. The Secretary may permit Federal participation, on the same basis and in the same manner as participation in projects on free highways under this title, in the construction of any toll highway, bridge, tunnel, or approach thereto, or the conversion of any free highway, bridge, tunnel or approach thereto to a toll facility, upon compliance with the provisions of this subsection, except that no Federal funds may be used to impose tolls on any existing free interstate highway. The highway, bridge, tunnel, or approach thereto must be publicly owned. The appropriate State transportation or highway department or departments must be party to an agreement with the Secretary that provides that—

"(1) all tolls received from the operation of the facility, less the actual cost of operation and maintenance, shall be applied to repayment, including debt service and reasonable return on investment, of the party financing the facility, except for amounts contributed by the United States; and

"(2) after the date of final repayment, revenues from tolls in excess of revenues needed to recover actual costs of operation and maintenance shall be used for any transportation project eligible under this title.

"(d) CONSTRUCTION OF FERRYBOATS AND FERRY APPROACHES.—The Secretary may permit Federal participation under this title in the construction of ferryboats and ferry approaches, whether toll or free, subject to the following conditions:

"(1) It is not feasible to build a bridge, tunnel, or other normal highway structure in lieu of the ferry.

"(2) The operation of the ferry shall not be on a route that is classified as local, as a rural minor collector, or as a route on the Interstate System, except that, in the case of ferry systems that serve such routes and other routes in an integrated system, such ferry may operate throughout the entire service area of the ferry system.

"(3) The ferry shall be publicly owned and operated.

"(4) The operating authority and the amount of fares charged for passage on the ferry shall be under the control of the State, and all revenues shall be applied to actual and necessary costs of operation, maintenance, and repair, including replacement of ferryboats.

"(5) The ferry shall be operated only within the State (including the islands which comprise the State of Hawaii and the islands which comprise the Commonwealth of Puerto Rico) or between adjoining States. Except with respect to operations between the islands which comprise the State of Hawaii, operations between the islands which comprise the Commonwealth of Puerto Rico, operations between the islands of Maine, and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada, no part of the ferry operations shall be in any foreign or international waters.

"(6) No ferry shall be sold, leased, or otherwise disposed of without the approval of the Secretary. The Federal share of any proceeds from a disposition shall be credited to the unprogrammed balance of Surface Transportation Program funds last apportioned to the State. Any amounts credited shall be in addition to other funds then apportioned to the State and shall be available for expenditure in accordance with the provisions of this title.

"(e) CONGESTION PRICING PILOT PROGRAM.—(1) The Secretary shall solicit the participation of State and local governments and public authorities for one or more congestion pricing pilot projects. The Secretary may enter into cooperative agreements with as many as five such State or local governments or public authorities to establish, maintain, and monitor congestion pricing projects.

"(2) Notwithstanding subsection (c), the Federal share payable for such programs shall be 100 per centum. The Secretary shall fund all of the development and other start up costs of such projects, including salaries and expenses, for a period of at least one year, and thereafter until such time that sufficient revenues are being generated by the program to fund its operating costs without Federal participation, except that the Secretary may not fund any project for more than three years.

"(3) Revenues generated by any pilot project under this section must be applied to projects eligible under this title.

"(4) The Secretary shall monitor the effect of such projects for a period of at least ten years, and shall report to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives every two years on the effects such programs are having on driver behavior, traffic volume, transit ridership, air quality, and availability of funds for transportation programs.

"(5) Of the sums made available the Secretary pursuant to section 104(a), not to exceed not to exceed $25,000,000 shall be made available each fiscal year to carry out the requirements of this subsection.".

(c) EXISTING TOLL FACILITY AGREEMENTS.—At the request of the non-Federal parties to any toll facility agreement reached before October 1, 1991 under (1) section 105 of the Federal-Aid Highway Act of 1978; or (2) section 129 of title 23, United States Code, as in effect immediately prior to the date of enactment of this Act; the Secretary shall allow for the continuance of tolls without repayment of Federal funds, except that revenues collected from such tolls in excess of revenues needed to recover the local share of construction and acquisition costs including debt service and the actual costs of operation and maintenance shall be used for: (1) any transportation project eligible under this title, or (2) costs associated with transportation facilities under the jurisdiction of said non-Federal party, including debt service and costs related to the construction, reconstruction, restoration, repair, operation and maintenance of said facilities.

SEC. 113. METROPOLITAN PLANNING.

(a) NEW REQUIREMENTS.—Section 134 of title 23, United States Code, is amended to read as follows:

"§ 134. Metropolitan planning

"(a) METROPOLITAN PLANNING ORGANIZATIONS.—A metropolitan planning organization shall be designated for each urbanized area of over fifty thousand in population within any State by agreement among the Governor and the units of general purpose local government. Each metropolitan planning organization shall designate boundaries for a metropolitan area pursuant to subsection (b) and shall carry out the transportation planning process required by this section. Metropolitan planning organizations in existence on or before October 1, 1991 shall be considered as being designated for the purposes of this section. Metropolitan planning organizations that represent portions of multi-State metropolitan areas shall, where feasible, provide for coordinated transportation planning for the entire metropolitan area by adopting a single transportation improvement program for such area. The Governor of any State may enter into such agreements as may be necessary with the Governor of any other State to provide for comprehensive multi-State transportation planning for metropolitan areas that encompass portions of more than one State.

"(b) METROPOLITAN AREA BOUNDARIES.—For the purposes of this title, the boundaries of any metropolitan area shall be determined by the metropolitan planning organization and the Governor. Each metropolitan area shall cover at least the existing urbanized area and the area expected to become urbanized within the forecast period, and may encompass the entire Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area as defined by the Bureau of the Census. For areas designated as nonattainment for ozone or carbon monoxide under the Clean Air Act, as amended, the boundaries of the metropolitan area shall be the boundaries of the nonattainment area, except as otherwise provided by the metropolitan planning organization.

"(c) GENERAL REQUIREMENT FOR PLANNING.—In developing transportation plans and programs pursuant to this section, each metropolitan planning organization shall, at a minimum—

"(1) consider preservation of existing transportation facilities and, where practical, meet transportation needs by using existing transportation facilities more efficiently;

"(2) provide that transportation planning is consistent with applicable Federal, State and local energy conservation programs, goals and objectives;

"(3) consider the need to relieve congestion and prevent congestion from occurring where it does not yet occur;

"(4) conform with the applicable requirements of the Clean Air Act as amended;

"(5) consider the effect of transportation policy decisions on land use and development, and assure that transportation plans and programs are consistent with the provisions of all applicable short- and long-term land use and development plans;

"(6) recommend, where appropriate, the use of innovative financing mechanisms, including value capture, tolls, and congestion pricing to finance projects and programs;

"(7) provide for the programming of expenditure on transportation enhancement activities as required in section 133;

"(8) consider the effects of all transportation projects to be undertaken within the metropolitan area, without regard to whether such projects are publicly funded;

"(9) consider the overall social, economic, and environmental effects of transportation decisions;

"(10) take into account international border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation areas, monuments and historic sites, and military installations;

"(11) consider the need for connectivity of roads within the metropolitan area with roads outside the metropolitan area; and

"(12) develop a long range transportation plan.

"(d) TRANSPORTATION IMPROVEMENT PROGRAM.—

"(1) DEVELOPMENT OF PROGRAM.—The metropolitan planning organization, in cooperation with the State and relevant transit operators, shall develop a transportation improvement program that includes all projects within the metropolitan area proposed for funding pursuant to this title and the Urban Mass Transportation Act, that is consistent with the long range transportation plan developed by the metropolitan planning organization, and that conforms with the applicable State implementation plan developed pursuant to the Clean Air Act, as amended. The program may include a project only if full funding can be reasonably anticipated to be available for such project within the period of time contemplated for its completion. The program shall be updated at least every two years, and shall be approved by the metropolitan planning organization and the Governor.

"(2) PRIORITY OF PROJECTS.—The transportation improvement program shall include a priority list of projects and project segments to be carried out within each three-year period after the initial adoption of the transportation improvement program.

"(3) SELECTION OF PROJECTS.—Except as otherwise provided in subsection (e), project selection in metropolitan areas for projects involving Federal participation shall be carried out by the State in cooperation with the metropolitan planning organization, and shall be in conformance with the transportation improvement program for the area.

"(e) ADDITIONAL REQUIREMENTS FOR AREAS OF OVER 250,000 POPULATION.—

"(1) For metropolitan statistical areas of more than two hundred fifty thousand population within any State, transportation plans and programs shall be based on a continuing and comprehensive transportation planning process carried out by a metropolitan planning organization in cooperation with the State and transit operators.

"(2) The planning process shall include a congestion management system that provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operational management strategies. In nonattainment areas for ozone or carbon monoxide, the development of the congestion management system shall be coordinated with the development of the transportation element of the State Implementation Plan required by the Clean Air Act as amended.

"(3) The Secretary shall assure that each metropolitan planning organization is carrying out its responsibilities under applicable provisions of Federal law, and shall so certify at least once per annum. The Secretary may certify a metropolitan planning organization only if it is complying with the requirements of section 134 and other applicable requirements of Federal law. If at any time after October 1, 1992 a metropolitan planning organization is not certified by the Secretary, the obligation authority attributed to the relevant metropolitan area pursuant to section 133(b)(1) shall lapse and be redistributed to other States in accordance with the requirements of section 104(d)(2), regarding redistribution of obligation authority.

"(4) SELECTION OF PROJECTS.—All projects carried out with Federal participation pursuant to this title (excluding projects undertaken pursuant to the Bridge and Interstate Maintenance Programs) or the Urban Mass Transportation Act within the boundaries of a metropolitan area covered under this subsection shall be selected by the metropolitan planning organization and the Governor in conformance with the transportation improvement program for such area and the priorities established therein. Projects undertaken pursuant to the Bridge and Interstate Maintenance Programs shall be selected by the State in cooperation with the metropolitan planning organization and shall be in conformance with the transportation improvement plan for the area.

"(5) The metropolitan planning organization for areas covered under this subsection shall provide for a fair and equitable distribution of funds within the metropolitan area.

"(6) Metropolitan planning organizations for areas covered under this subsection shall provide opportunity for public review of draft transportation plans and programs prior to final approval of such plans and programs.

"(f) ADDITIONAL REQUIREMENTS FOR NONATTAINMENT AREAS.—

"(1) Notwithstanding any other provision of law, for areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, as amended, Federal funds may not be programmed in such area for any highway project that will result in a significant increase in carrying capacity for single occupant vehicles unless the project is part of an approved congestion management system.

"(2) If, at the end of any three-year planning period established pursuant to subsection (d), a project to be carried out within such period has not been carried out, any changes in emissions of pollutants that contribute to nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, as amended, that have been attributed to such project shall be discounted for the purposes of conformity review pursuant to section 176(c) of the Clean Air Act, as amended, (42 U.S.C. 7506(c)) until such time as binding commitments have been made to complete the project by a date certain.

"(3) For the purpose of determining conformity pursuant to section 176(c) of the Clean Air Act, as amended, (42 U.S.C. 7506(c)), the metropolitan planning organization shall take into account emissions expected to result from all projects to be carried out within the metropolitan area, whether such projects are publicly or privately funded.

"(g) REPROGRAMMING OF SET ASIDE FUNDS.—Any funds set aside pursuant to section 104(f) of this title that are not used for the purpose of carrying out this subsection may be made available by the metropolitan planning organization to the State for the purpose of funding activities under section 135.

"(h) For purposes of subsections (b) and (e), the Secretary shall use estimates prepared by the Secretary of Commerce when determining population figures.".

(b) 1 PERCENT SET ASIDE.—Section 104(f) of title 23, United States Code, is amended by striking in paragraph (1) "one-half per centum" and inserting in lieu thereof "1 per centum"; by striking in paragraph (1) "the Federal-aid systems" and inserting in lieu thereof "programs authorized under this title"; by striking in paragraph (1) all after the fifth comma and inserting in lieu thereof "except that the amount from which such set aside is made shall not include funds authorized to be appropriated for the Interstate Construction and Interstate Substitute programs."; and by striking in paragraph (3) "section 120" and inserting in lieu thereof "section 120(j)".

(c) APPORTIONMENT WITHIN A STATE.—Section 104(f)(4) of title 23, United States Code, is amended by striking "and metropolitan area transportation needs" and inserting in lieu thereof "attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of section 134 and other applicable Federal law.".

(d) CONFORMING AMENDMENTS.—

(1) The analysis of chapter 1 of title 23, United States Code, is amended by striking:

"Sec. 134 Transportation planning in certain urban areas."

and inserting in lieu thereof:

"Sec. 134. Metropolitan Planning.".

(2) Section 104(f)(3) of title 23, United States Code, is amended by striking "designated by the State as being".

SEC. 114. STATEWIDE PLANNING.

(a) NEW REQUIREMENTS.—Section 135 of title 23, United States Code, is amended to read as follows:

"§ 135. Statewide planning

"(a) MANAGEMENT SYSTEMS.—Each State shall have a Bridge Management System, a Pavement Management System, a Safety Management System, and a Congestion Management System developed in accordance with regulations prescribed by the Secretary, except that any State that certifies to the satisfaction of the Secretary that no significant congestion exists or is projected to exist within such State shall not be required to have a congestion management system. Systems shall include inventories and use current condition data to identify needs. The Bridge Management System shall include provisions for life-cycle cost analysis where appropriate. The Secretary may withhold project approvals under section 106 and may decline to accept a notice and certification under section 133(c)(2) if a State fails to have approved systems. The regulations shall provide for periodic Federal review of the Management Systems.

"(b) TRAFFIC MONITORING SYSTEM.—Each State shall have a Traffic Monitoring Sys-

tem to provide statistically based data necessary for pavement management, bridge evaluation, safety management, congestion management, national studies, and other activities under this title. The Secretary shall establish guidelines and requirements for the Traffic Monitoring System.

"(c) STATE PLANNING PROCESS.—Each State shall undertake a continuous transportation planning process which shall—

"(1) take into account the results of the management systems required pursuant to subsection (a);

"(2) take into account any Federal, State or local energy use goals, objectives, programs or requirements;

"(3) take into account any valid State or local development or land use plans, programs, or requirements;

"(4) take into account international border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation areas, monuments and historic sites, and military installations;

"(5) provide for comprehensive surface transportation planning for non-metropolitan areas through a process that includes consultation with local elected officials with jurisdiction over transportation;

"(6) be consistent with any metropolitan area plan developed pursuant to section 134;

"(7) provide for connectivity between metropolitan areas within the State and with metropolitan areas in other States;

"(8) take into account recreational travel and tourism;

"(9) take into account any State plan developed pursuant to the Federal Water Pollution Control Act; and

"(10) be coordinated with the development of any State implementation plan required under the Clean Air Act, as amended, and provide for compliance with any relevant requirements of such plan and such Act.

"(d) ADDITIONAL REQUIREMENTS FOR STATES CONTAINING NONATTAINMENT AREAS.—Any State containing an area in nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, as amended, shall develop and update at least every two years a long range transportation plan. In addition to the requirements in subsection (c), such plan shall—

"(1) incorporate without amendment the provisions of any metropolitan area plan developed pursuant to section 134; and

"(2) provide for coordination in the development of the State transportation plan required pursuant to this section and the State implementation plan required pursuant to the Clean Air Act, as amended.

"(e) FUNDING.—Funds set aside pursuant to section 307(c)(1) of title 23, United States Code, shall be available to carry out the requirements of this section.".

(b) CONFORMING AMENDMENTS.—The analysis of chapter 1 of title 23, United States Code, is amended by striking:

"Sec. 135. Traffic operations improvement programs.".

and inserting in lieu thereof:

"Sec. 135. Statewide Planning.".

SEC. 115. RESEARCH AND DATA COLLECTION.

(a) RESEARCH PROGRAM.—Section 307 of title 23, United States Code, is amended as follows:

(1) NEW REQUIREMENTS.—Subsection (b) is redesignated (b)(1), and the following new paragraphs are added thereafter:

"(2) The highway research program shall include a coordinated long term program of research on Intelligent Vehicle Highway Systems.

"(3) The highway research program shall include a coordinated long term program of research for the development, use and dissemination of performance indicators to measure the performance of the surface transportation system, including indicators for productivity, efficiency, energy use, air quality, congestion, safety, maintenance, and other factors that reflect the overall performance of the surface transportation system.

"(4) The highway research program shall continue those portions of the work of the Strategic Highway Research Program that the Secretary deems to be important.

"(5) The Secretary shall create and administer a transportation research fellowship program to attract qualified students to the field of transportation engineering and research, which shall be known as The Dwight David Eisenhower Transportation Fellowship Program. No less than $2,000,000 per fiscal year of the funds set aside pursuant to section 307 shall be made available to carry out this paragraph.

"(6)(A) The Secretary in cooperation with other appropriate Federal agencies, the Governors of Arizona, California, New Mexico and Texas, and the appropriate representatives of the Republic of Mexico, shall assess the need for transportation infrastructure to facilitate trade between the United States and Mexico. Within 18 months following the date of the enactment of this Act, the Secretary shall report to Congress and the Governors of Arizona, California, New Mexico, and Texas on such transportation infrastructure needs and the associated costs.

"(B) The Secretary in cooperation with other appropriate Federal agencies, the Governors of Maine, New Hampshire, Vermont, New York, Michigan, Minnesota, North Dakota, Montana, Idaho, Washington, and Alaska, and the appropriate representatives from Canada, shall assess the need for transportation infrastructure to facilitate trade between the United States and Canada. Within 18 months following the date of the enactment of this Act the Secretary shall report to Congress and the Governors of Maine, New Hampshire, Vermont, New York, Michigan, Minnesota, North Dakota, Montana, Idaho, Washington, and Alaska on such transportation infrastructure needs and the associated costs.".

(2) Subsection (c) is amended by striking "highway programs and local public transportation systems" and inserting in lieu thereof "transportation programs"; by striking "highway usage" and inserting in lieu thereof "transportation"; and by striking "highways and highway systems" and inserting in lieu thereof "transportation systems".

(b) FEDERAL SHARE FOR STATE RESEARCH ACTIVITIES.—Section 120(j) is amended by striking "85 per centum" and inserting in lieu thereof "80 per centum"; and by striking "exclusive of" and inserting in lieu thereof ", and"

(c) STATE AUTHORITY TO PROGRAM FUNDS.—Section 307(c) of title 23, United States Code, is amended by striking "upon the request of the State highway department, with the approval of the Secretary, with or without State funds," in paragraph (1) and inserting in lieu thereof "by the State highway department only"; by striking "Not to exceed 1½ per centum" and inserting in lieu thereof "Two per centum"; by striking "section 104" and inserting in lieu thereof "sections 104 and 144"; and by repealing paragraphs (2) and (3).

(d) DATA COLLECTION AND ANALYSIS.—

(1) BUREAU OF TRANSPORTATION STATISTICS.—There is established within the Department a Bureau of Transportation Statistics (hereafter referred to as the "Bureau"). The Bureau shall be responsible for—

(A) compiling, analyzing, and publishing a comprehensive set of transportation statistics which should provide timely summary in the form of industrywide aggregates, and multiyear averages, and totals of some similar form which include information on—

(i) productivity in the various portions of the transportation sector,

(ii) traffic flows,

(iii) travel times,

(iv) vehicle weights,

(v) variables influencing traveling behavior including choice of mode,

(vi) travel costs of intracity commuting and intercity trips,

(vii) availability and number of passengers served by mass transit for each mass transit authority,

(viii) frequency of vehicle and transportation facility repairs and other interruptions of service,

(ix) accidents,

(x) collateral damage to the human and natural environment,

(xi) and the condition of the transportation system, all of information which shall be suitable for conducting cost-benefit studies, including comparisons among modes and intermodal transport systems.

(B) The Director of the Bureau of Transportation Statistics, in cooperation with the States, shall pursue a comprehensive, long-term program for the collection and analysis of data relating to the performance of the national transportation system. This effort shall—

(i) be coordinated with the efforts undertaken pursuant to section 307(b)(3) of title 23 to develop performance indicators for the national transportation system;

(ii) assure that data and other information are collected in a manner to maximize the ability to compare data from different regions and time periods; and

(iii) assure that data are quality controlled for accuracy and are disseminated to the States and other interested parties.

(C) promulgating guidelines for the collection of information by the Department required for statistics under this paragraph to assure that the information is accurate, reliable, relevant, and in a form that permits systematic analysis;

(D) coordinating the collection of information by the Department for developing such statistics with related information-gathering activities conducted by other Federal agencies;

(E) Making readily accessible the statistics published under this paragraph; and

(F) identifying missing information of the kind identified under subparagraph (A) (i) through (xi), reviewing these information needs at least annually with the Advisory Council on Transportation Statistics, and making recommendations to the appropriate Department of Transportation research officials concerning extramural and intramural research programs to provide such information.

(2) Nothing in the provisions of paragraph (1) shall authorize the Bureau to require the collection of any data by any other Department, or to establish observation or monitoring programs.

(3) Information compiled by the Bureau of Transportation Statistics shall not be disclosed publicly in a manner that would reveal the personal identity of any individual, consistent with the Privacy Act of 1974 (5 U.S.C. 552a), reveal trade secrets and com-

mercial or financial information provided by any person to be identified with such person.

(4) DIRECTOR OF TRANSPORTATION STATISTICS.—The Bureau shall be under the direction of a Director of Transportation Statistics (hereafter referred to as the "Director") who shall be appointed by the President, by and with the advice and consent of the Senate. The term of the Director shall be 4 years. To begin within 180 days of enactment of this Act. The Director shall be a qualified individual with experience in the compilation and analysis of transportation statistics. The Director shall report directly to the Secretary. The Director shall be compensated at the rate provided for at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(5) TRANSPORTATION STATISTICS ANNUAL REPORT.—On January 1, 1992, and each January 1 thereafter, the Director shall submit to the President a Transportation Statistics Annual Report (hereafter referred to as the "Report"). The Report shall include, but not be limited to those items identified in subparagraph (A) (i) through (x). The Report shall also include documentation of the methods used to obtain and assure the quality of the statistics presented in the Report and recommendations in improving transportation statistical information.

(6) CONTINUING PERFORMANCE OF THE FUNCTIONS OF THE DIRECTOR PENDING CONFIRMATION.—An individual who, on the effective date of this Act, is performing any of the functions required by this section to be performed by the Director may continue to perform such functions until such functions are assigned to an individual appointed as the Director under this Act.

(7) ADVISORY COUNCIL ON TRANSPORTATION STATISTICS.—The Director shall appoint an Advisory Council on Transportation Statistics, comprised of no more than 6 private citizens who have expertise in transportation statistics and analysis (except that at least one of such appointees should have expertise in economics) to advise the Director on transportation statistics and analyses, including whether the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information. The Council shall be subject to the provisions of the Federal Advisory Committee Act.

(8) STUDY OF DATA NEEDS.—(A) No later than 1 year after the start of Bureau operations, the Secretary of the Department of Transportation in consultation with the Director of the Bureau and the Assistant Secretary designated as Chief Information Resources Officer, shall enter into an agreement with the National Academy of Sciences for a study, evaluation, and report on the adequacy of the data collection procedures and capabilities of the Department. No later than 18 months following an agreement, the National Academy of Sciences shall report its findings to the Secretary and the Congress. The report shall include an evaluation of the Department's data collection resources, needs, and requirements, and shall include an assessment and evaluation of the following systems, capabilities, and procedures established by the Department to meet those needs and requirements—

(i) data collection procedures and capabilities;

(ii) data analysis procedures and capabilities;

(iii) the ability of data bases to integrate with one another;

(iv) computer hardware and software capabilities;

(v) management information systems, including the ability of management information systems to integrate with one another;

(vi) Department personnel; and

(vii) the Department's budgetary needs and resources for data collection, including an assessment of the adequacy of the budgetary resources provided to the Department and budgetary resources used by the Department for data collection needs and purposes.

(9) The report shall include recommendations for improving the Department's data collection systems, capabilities, procedures, data collection, and analytical hardware and software, and for improving its management information systems.

(10) FUNDING.—Section 104(a) of title 23, United States Code, is amended by inserting ", data collection, and other programs" after "research"; and by inserting ", and section 303" after "section 307".

(11) ANALYSIS.—The analysis for chapter 3 of title 23, United States Code, is amended by striking:

"Sec. 303. [Repealed. Public Law 97-449].".

and inserting in lieu thereof:

"Sec. 303. Data Collection and Analysis.".

(12) STUDY OF STATE LEVEL OF EFFORT.—(A) Not later than 3 months after the date of enactment of this Act, the Secretary and the Director of the Bureau shall undertake a comprehensive study of the most appropriate and accurate methods of calculating State level of effort in funding surface transportation programs.

(B) Such study shall include collection of data relating to State and local revenue collected and spent on surface transportation programs. Such revenue shall include income from fuel taxes, toll revenues including bridge and ferry tolls, sales taxes, general fund appropriations, property taxes, bonds, administrative fees, taxes on commercial vehicles, and other appropriate State and local revenue sources as the Director of the Bureau deems appropriate.

(C) Not later than 9 months after the date of enactment of this Act, the Secretary and the Director of the Bureau shall provide a written report to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives detailing the findings of the study. Such report shall include recommendations on the most appropriate measure of State level of effort in funding surface transportation programs and comprehensive data by State on revenue sources and amounts collected by States and local governments and devoted to surface transportation programs.

(e) FUNDAMENTAL PROPERTY STUDIES.—(1) The Administrator of the Federal Highway Administration (hereafter in this subsection referred to as the "Administrator") is directed to conduct fundamental chemical property and physical property studies of petroleum asphalts and modified asphalts used in highway construction in the United States with the primary emphasis of prediction of pavement performance from the fundamental and rapidly measurable properties of asphalts and modified asphalts.

(2) In carrying out the studies in paragraph (1), the Administrator shall enter into contracts with a non-profit organization with demonstrated expertise in research associated in the above areas in order to undertake the necessary technical and analytical research in coordination with existing programs, including the Strategic Highway Research Program, that evaluate actual performance of asphalts and modified asphalts in roadways.

(3) ACTIVITIES OF STUDIES.—The Administrator in conducting the studies in this subsection shall include the following activities:

(A) fundamental composition studies;

(B) fundamental physical and rheological property studies;

(C) asphalt-aggregate interaction studies;

(D) coordination of composition studies, physical and rheological property studies and asphalt-aggregate interaction studies for the purposes of prediction of pavement performance including refinements of strategic Highway Research Program specifications.

(4) The Administrator, in coordination with a non-profit research organization, shall implement a test strip, the purpose of which shall be to demonstrate and evaluate unique energy and environmental advantages of the use of shale oil modified asphalts under extreme climate conditions. The Administrator shall report to Congress on his findings as required under paragraph (6). Such findings shall include an evaluation of this test strip and legislative recommendations on a national program to support American transportation and energy security requirements. In no event shall this report be submitted after November 30, 1995. For purposes of construction activities related to this test strip the Administrator and the Director of the National Park Service shall make the necessary funds available in equal amounts from the Park and Parklands allocation for the Federal lands highway program.

(5) AUTHORIZATIONS.—The Administrator shall provide at least $3,000,000 for each of fiscal years 1992, 1993, 1994, 1995 and 1996 to carry-out the provisions of paragraph (2).

(6) ANNUAL REPORT TO CONGRESS.—On November 30 of each year, the Administrator shall report to Congress on progress in implementing the provisions of this subsection in the preceding fiscal year. For purposes of fiscal year 1992, the Administrator shall provide a report on proposed activities within one hundred eighty days of enactment of this section.

(f) COLLABORATIVE RESEARCH AND DEVELOPMENT.—Section 307 of title 23, United States Code, is amended by adding subsection (g) as follows:

"(g) COLLABORATIVE RESEARCH AND DEVELOPMENT.—For purposes of encouraging innovative solutions to highway problems, and stimulating the marketing of new technology by private industry, the Secretary is authorized to undertake on a cost-shared basis, collaborative research and development with non-Federal entities, including State and local governments; foreign governments, colleges and universities, corporations, institutions, partnerships, sole proprietorships, and trade associations which are incorporated or established under the laws of any of the States of the United States. In carrying out this section, the Secretary may enter into a cooperative research and development agreement, as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a). The average Federal share in these agreements shall not exceed 50 percent except, where there is substantial public interest or benefit, the Secretary may approve a higher Federal level of participation. Cooperative research and development agreements shall recognize all directly related costs to the non-Federal partners including personnel, travel, hardware development, etc. The research, development, or utilization, of any technology pursuant to an agreement under the above provisions, including the terms under which technology may be licensed and

the resulting royalties may be distributed, shall be subject to provisions of the Stevenson-Wydler Technology Innovation Act of 1980, as amended.".

(g) Section 307(c) of title 23, United States Code, is amended by inserting a new paragraph (2) to read as follows:

"(2) In addition to the percentage provided in paragraph (1) of this subsection, not to exceed one-half of one per centum of sums apportioned under sections 104 and 144 shall be available for expenditure upon request of the State Highway Department to rural planning organizations designated by the State as being responsible for assisting the State in carrying out the provisions of section 135 of this title.".

SEC. 116. MAGNETIC LEVITATION TRANSPORTATION.

(a) DECLARATION OF POLICY.—Section 101(c) of title 23, United States Code, is amended to read as follows:

"(c) It is the policy of the United States to establish in the shortest time practicable a United States designed and constructed magnetic levitation transportation technology capable of operating along Federal-aid highway rights-of-way, as part of a national transportation system of the United States.".

(b) NATIONAL MAGNETIC LEVITATION DESIGN PROGRAM.—

(1) MANAGEMENT OF PROGRAM.—(A) There is hereby established a National Magnetic Levitation Design Program to be managed jointly by Secretary and the Assistant Secretary of the Army for Civil Works (hereafter referred to as "the Assistant Secretary"). In carrying out such program, the Secretary and the Assistant Secretary shall consult with appropriate Federal officials, including the Secretary of Energy and the Administrator of the Environmental Protection Agency. The Secretary and the Assistant Secretary shall establish a National Maglev Joint Project Office (hereafter referred to as the "Maglev Project Office") to carry out such program, and shall enter into such arrangements as may be necessary for funding, staffing, office space, and other requirements that will allow the Maglev Project Office to carry out its functions.

(B) STRATEGIC PLAN.—The Secretary and the Assistant Secretary, in consultation with appropriate Federal officials including the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall develop a national strategic plan for the design and construction of a national magnetic levitation surface transportation system. Such plan shall consider other modes of high speed surface transportation, including high speed rail. The plan shall be completed and transmitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives within eighteen months of the date of enactment of this Act.

(2) PHASE ONE GRANTS.—(A) Not later than three months after the date of enactment of this Act, any eligible participant may submit to the Maglev Project Office a proposal for research and development of a conceptual design for a maglev system and an application for a grant to carry out that research and development.

(B) Not later than six months after the date of enactment of this Act, the Secretary and the Assistant Secretary shall award grants for one year of research and development to no less than six applicants. If fewer than six complete applications have been received, grants shall be awarded to as many applicants as is practical.

(C) The Secretary and the Assistant Secretary may approve a grant under subparagraph (B) only after consideration of factors relating to the construction and operation of a magnetic levitation system, including the cost-effectiveness, ease of maintenance, safety, limited environmental impact, ability to achieve sustained high speeds, ability to operate along the Interstate highway rights of way, the potential for the guideway design to be a national standard, and the bidder's resources, capabilities, and history of successfully designing and developing systems of similar complexity: *Provided*, That, the applicant agrees to submit a report to the Maglev Project Office detailing the results of the research and development, and agrees to provide for matching of the phase one grant at a 90 per centum Federal, 10 per centum non-Federal cost share.

(D) For purposes of this section, the term 'eligible participant' means United States private businesses, United States public and private education and research organizations, Federal laboratories, and consortia of such businesses, organizations and laboratories.

(3) PHASE TWO GRANTS.—Within three months of receiving the reports under paragraph (2), the Secretary and the Assistant Secretary shall select not more than three participants to receive one-year grants for research and development leading to a final design for a maglev system. The Secretary and the Assistant Secretary may only award grants under this paragraph if they determine that the applicant has demonstrated technical merit for the conceptual design and the potential for further development of such design into a national system, and if the applicant agrees to provide for matching of the phase two grant at a 80 per centum Federal, 20 per centum non-Federal cost share.

(4) PROTOTYPE.—(A) Within six months of receiving the final designs developed under paragraph (3), the Secretary and the Assistant Secretary shall select one design for development into a full scale prototype. Not more than three months after the selection of such design, the Secretary and the Assistant Secretary shall award one prototype construction grant to a State government, local government, organization of State and local governments, consortium of United States private businesses or any combination of these entities for the purpose of constructing a prototype maglev system in accordance with the selected design.

(B) Selection of the grant recipient under this paragraph shall be based on the following factors:

(i) The project shall utilize interstate highway rights-of-way.

(ii) The project shall have sufficient length to allow significant full speed operations between stops.

(iii) No more than 75 per centum of the cost of the project shall be borne by the United States.

(iv) The project shall be constructed and ready for operational testing within three years after the award of the grant.

(v) The project shall provide for the conversion of the prototype to commercial operation after testing and technical evaluation is completed.

(vi) The project shall be located in an area that provides a potential ridership base for future commercial operation.

(vii) The project shall be located in an area that experiences climatic and other environmental conditions that are representative of such conditions in the United States as a whole.

(viii) The project shall be suitable for eventual inclusion in a national magnetic levitation system network.

(c) LICENSING.—

(1) PROPRIETARY RIGHTS.—No trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5, United States Code, which is obtained from a United States business, research, or education entity as a result of activities under this Act shall be disclosed.

(2) COMMERCIAL INFORMATION.—The research, development and use of any technology developed pursuant to an agreement reached pursuant to this section, including the terms under which any technology may be licensed and the resulting royalties may be distributed, shall be subject to the provisions of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701-3714). In addition, the Secretary and the Assistant Secretary may require any grant recipient to assure that research and development shall be performed substantially in the United States, and that the products embodying the inventions made under any agreement pursuant to this section or produced through the use of such inventions shall be manufactured substantially in the United States.

(d) AVAILABILITY OF FUNDS.—Funds authorized to be appropriated to carry out this section shall remain available until expended.

(e) REPORTS.—The Secretary and the Assistant Secretary shall provide periodic reports on progress made under this section to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

(f) CONTRACT AUTHORITY.—Notwithstanding any other provision of law, the requirements of chapter 1 of title 23, United States Code, shall apply to the provisions of this section.

SEC. 117. ACCESS TO RIGHTS-OF-WAY.

(a) AVAILABILITY OF RIGHTS-OF-WAY.—Subsection 142(g) of title 23, United States Code, is amended to read as follows:

"(g) In any case where sufficient land exists within the publicly acquired rights-of-way of any highway, constructed in whole or in part with Federal-aid highway funds, to accommodate needed passenger, commuter, or high speed rail, magnetic levitation systems, highway and non-highway public mass transit facilities the Secretary shall authorize a State to make such lands and rights-of-way available with or without charge to a publicly or privately owned authority or company for such purposes.".

(b) AVAILABILITY OF AIRSPACE.—Section 156 of title 23, United States Code, is amended by adding before the period at the end of the first sentence the following: ": *Provided*, That the States may permit governmental use, use by public or private entities for passenger, commuter, or high speed rail, magnetic levitation systems, or other transit, utility use and occupancy where such use or occupancy is necessary for a transportation project allowed under this section, or use for transportation projects eligible for assistance under this title, with or without charge.".

(c) CONFORMING AMENDMENTS.—Section 142 of title 23, United States Code, is amended as follows:

(1) Paragraph (a)(1) is amended by striking "of the Federal-aid systems"; and by striking "project on any Federal-aid system" and inserting in lieu thereof "Surface Transportation Program project or as an Interstate construction project".

(2) Paragraph (a)(2) is repealed.
(3) Subsection (c) is repealed.
(4) Paragraph (e)(2) is repealed.
(5) Subsections (i) and (k) are repealed.

SEC. 118. REPORT ON REIMBURSEMENT FOR SEGMENTS CONSTRUCTED WITHOUT FEDERAL ASSISTANCE.

The Secretary shall update the findings of the report required by section 114 of the Federal-Aid Highway Act of 1956 to determine what amount the United States would pay to the States to reimburse the States for segments incorporated into the Interstate System that were constructed at non-Federal expense. The report required under this section shall be completed by October 1, 1993, and shall be transmitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

SEC. 119. DISADVANTAGED BUSINESS ENTERPRISES.

(a) CONTINUATION OF CURRENT LAW.—Section 106(c)(1) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 is amended by striking "titles I and III of this Act or obligated under" and inserting instead "the Surface Transportation Efficiency Act of 1991 or obligated under titles I and III of this Act and".

(b) ADJUSTMENT FOR INFLATION.—Section 106(c)(2)(A) of such 1987 Act is amended by striking "14,000,000" and inserting instead "15,370,000".

(c) STUDY.—The Comptroller General of the United States shall conduct a study of the Disadvantaged Business Enterprise program of the Federal Highway Administration (hereafter in this section referred to as the "DBE program"). The study shall include—

(1)(A) a determination of the percentage of disadvantaged business enterprises that have enrolled in the DBE program that have graduated from the DBE program after an enrollment period of 3 years;

(B) a determination of the number of disadvantaged business enterprises that have been enrolled in the DBE program for a period greater than 3 years; and

(C) a determination as to whether the graduation date any of the disadvantaged business enterprises described in subparagraph (B) should be accelerated;

(2) a determination of which State transportation programs meet the requirement under the DBE program for 10 per centum participation by minority-owned businesses and woman-owned businesses by contracting with out of State contractors in lieu of in-State contractors;

(3)(A) a determination as to whether adjustments in the DBE program could be made with respect to—

(i) Federal or State participation in training programs; and

(ii) Meeting capital needs and bonding requirements; and

(B) with respect to subparagraph (A), in the case where adjustments could be made, recommended adjustments that would continue to encourage minority participation in the program and would improve the success rate of the disadvantaged business enterprises;

(4) recommendations for additions and revisions to criteria used to determine the performance and financial capabilities of disadvantaged business enterprises participating under the DBE program; and

(5) a determination of additional costs incurred by the Federal Highway Administration in meeting the requirement for 10 per centum participation, as described in paragraph (2).

(d) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report on the findings of the study described in subsection (a) to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Public Works of the House of Representatives.

SEC. 120. AVAILABILITY OF FUNDS.

(a) Section 118 of title 23, United States Code, is amended to read as follows:

"(a) DATE AVAILABLE FOR OBLIGATION.—Except as otherwise specifically provided, authorizations from the Highway Account of the Highway Trust Fund to carry out this title shall be available for obligation when apportioned or allocated, or on October 1 of the fiscal year for which they are authorized, whichever first occurs.

"(b) PERIOD OF AVAILABILITY DISCRETIONARY PROJECTS.—

"(1) INTERSTATE CONSTRUCTION FUNDS.—Funds apportioned or allocated for Interstate Construction in a State shall remain available for obligation in that State until the close of the fiscal year in which they are apportioned or allocated. Sums not obligated by the close of the fiscal year in which they are apportioned or allocated shall be allocated to other States, except Massachusetts, at the discretion of the Secretary. All sums apportioned or allocated on or after October 1, 1994 shall remain available in the State until expended: *And provided further*, That all sums apportioned or allocated to Massachusetts on or before October 1, 1989 shall remain available until expended.

"(2) OTHER FUNDS.—Except as otherwise specifically provided, funds (other than interstate construction) apportioned or allocated pursuant to this title in a State shall remain available for obligation in that State for a period of three years after the close of the fiscal year for which the funds are authorized. Any amounts so apportioned or allocated that remain unobligated at the end of that period shall lapse.

"(c) ALASKA AND PUERTO RICO.—Funds made available to the State of Alaska and the Commonwealth of Puerto Rico under this title may be expended for construction of access and development roads that will serve resource development, recreational, residential, commercial, industrial, and other like purposes.

"(d) SET ASIDE FOR INTERSTATE DISCRETIONARY PROJECTS.—

"Before any apportionment is made under section 103(b)(5) for a fiscal year beginning after September 30, 1991 the Secretary shall set aside $200,000,000. Such funds shall be available for obligation by the Secretary under the following priorities:

"(1) FIRST.—For high cost projects which directly contribute to the completion of a segment of the interstate system which is not open to traffic;

"(2) SECOND.—For projects of high cost in relation to a State's total apportionment of funds; and

"(3) THIRD.—For projects with respect to which the Secretary may make payments under section 115 of title 23, United States Code.".

SEC. 121. PROGRAM EFFICIENCIES.

(a) Section 102 of title 23, United States Code, is amended to read as follows:

"§ 102. Program efficiencies

"(a) STANDARDS.—Except as provided in section 133(c), projects undertaken pursuant to the Surface Transportation Program must be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards. The design and construction standards to be adopted for highways classified as principal arterials and designated as a part of the interim or permanent National Highway System shall be those approved by the Secretary in cooperation with the State highway departments and the American Association of State Highway and Transportation Officials. Any State may request that the Secretary no longer review and approve design and construction standards for any project other than a project on an Interstate highway or other multi-lane limited access control highways, except as provided in subsection (b), regarding resurfacing projects. After receiving any such request the Secretary shall undertake project review only as requested by the State.

"(b) PAVEMENT REHABILITATION PROJECTS.—Notwithstanding any other provision of this title, a State highway or transportation department may approve the design of a pavement rehabilitation project or highway resurfacing project on any project constructed pursuant to this title: *Provided*, That States comply with the requirements of all other applicable Federal laws and regulations.

"(c) HIGHWAY MAINTENANCE STANDARDS.—Notwithstanding any other provision of this title, a State highway or transportation department may establish maintenance standards for projects constructed pursuant to this title, which shall be subject to annual approval by the Secretary. The Secretary may not withhold project approval pursuant to section 106 if a State is meeting maintenance standards approved by the Secretary under this section.

"(d) HOV PASSENGER REQUIREMENTS.—A State highway or transportation department shall establish the occupancy requirements of vehicles operating in high occupancy vehicle lanes: *Provided*, That no fewer than two occupants may be required. For the purposes of this title and the Surface Transportation Efficiency Act of 1991, motorcycles and bicycles shall not be considered single occupant vehicles. Nothing in this title or the Surface Transportation Efficiency Act of 1991 shall be construed as altering the provisions or effect of section 163 of the Highway Improvement Act of 1982.

"(e) ENGINEERING COST REIMBURSEMENT.—A State shall refund to the Highway Trust Fund all Federal funds for preliminary engineering for any project if the project has not yet advanced to construction or acquisition of right-of-way within ten years of receipt of such Federal funds.".

(b) HISTORIC AND SCENIC VALUES.—Section 109 of title 23, United States Code, is amended by adding at the end the following new subsection:

"(p) Where a proposed project under sections 103(e)(4), 133, or 144 involves a historic facility or where such project is located in an area of historic or scenic value, the Secretary may approve such project notwithstanding the requirements of subsections (a) and (b) and section 133(c) if such project is designed to standards that allow for the preservation of these values: *Provided*, That such project is designed with mitigation measures to allow preservation of these values and ensure safe operation of the project.".

(c) DELEGATION OF RESPONSIBILITIES.—Section 302 of title 23, United States Code, is amended by adding at the end the following new subsection:

"(c) At the request of the Governor of any State, the Secretary is authorized to permit the highway or transportation department of a municipality of over 1 million population within the State to perform all such duties and responsibilities regarding projects undertaken within the municipality as are delegated to it that would otherwise be the responsibility of the State highway or transportation department. For purposes of this subsection, the Secretary shall use estimates prepared by the Secretary of Commerce when determining population figures.".

(d) CONFORMING AMENDMENTS.—The analysis of chapter 1 of title 23, United States Code, is amended by striking:

"Sec. 102. Authorizations.".

and inserting in lieu thereof:

"Sec. 102. Program efficiencies.".

SEC. 122. USE OF SAFETY BELTS AND MOTORCYCLE HELMETS.

(a) NEW REQUIREMENTS.—Section 153 of title 23, United States Code, is amended to read as follows:

"§ 153. Use of safety belts and motorcycle helmets

"(a) STATE LAWS.—

"(1) FISCAL YEAR 1995.—If, at any time in fiscal year 1994 a State does not have in effect—

"(A) a State law which makes it unlawful for an individual to operate a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet; and

"(B) a State law which makes it unlawful for an individual to operate a passenger vehicle if any individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body;

the State shall expend for highway safety programs 1.5 per centum of the amount apportioned to such State for fiscal year 1995 under section 104(b)(1).

"(2) AFTER FISCAL YEAR 1995.—If, at any time in a fiscal year beginning after September 30, 1994, a State does not have in effect—

"(A) a State law which makes it unlawful for an individual to operate a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet; and

"(B) a State law which makes it unlawful for an individual to operate a passenger vehicle if any individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) has a safety belt properly fastened about the individual's body;

the State shall expend for highway safety programs 3 per centum of the amount apportioned to such State for the succeeding fiscal year under section 104(b)(1). A State which is required to expend funds for highway safety programs under this subsection shall expend such funds for purposes eligible under section 402; section 152, except repavement; and section 130.

"(3) FEDERAL SHARE.—The Federal share of the cost of any project carried out under this subsection shall be 100 per centum.

"(4) AVAILABILITY.—Notwithstanding the requirements of section 118, funds subject to be set aside under this subsection shall be available only in the year for which they were apportioned, and shall thereafter lapse. For purposes of making expenditures of such funds, a State shall use an amount of the obligation authority distributed for the Surface Transportation Program for the fiscal year in which the set aside apportionments were made equal to the amount required to be expended under this subsection.

"(b) GRANTS TO STATES.—

"(1) STATE ELIGIBILITY.—The Secretary may make grants to a State in accordance with this section if such State has in effect—

"(A) a State law which makes it unlawful for an individual to operate a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet; and

"(B) a State law which makes it unlawful for an individual to operate a passenger vehicle if any individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body.

"(2) USE OF GRANTS.—A grant made to a State under this section shall be used to adopt and implement a traffic safety program to carry out the following purposes:

"(A) To educate the public about motorcycle and passenger vehicle safety and motorcycle helmet, safety belt, and child restraint system use and to involve public health education agencies and other related agencies in these efforts.

"(B) To train law enforcement officers in the enforcement of State laws described in paragraph (1).

"(C) To monitor the rate of compliance with State laws described in subsection (a).

"(D) To enforce State laws described in paragraph (1).

"(3) MAINTENANCE OF EFFORT.—A grant may not be made to a State under this section in any fiscal year unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for any traffic safety program described in subsection (b) at or above the average level of such expenditures in the State's two fiscal years preceding the date of the enactment of this section.

"(4) FEDERAL SHARE.—A State may not receive a grant under this section in more than three fiscal years. The Federal share payable for a grant under this section shall not exceed—

"(A) in the first fiscal year such State receives a grant, 75 per centum of the cost of implementing in such fiscal year a traffic safety program described in subsection (b);

"(B) in the second fiscal year such State receives a grant, 50 per centum of the cost of implementing in such traffic safety program; and

"(C) in the third fiscal year such State receives a grant, 25 per centum of the cost of implementing in such fiscal year such traffic safety program.

"(5) MAXIMUM AGGREGATE AMOUNT OF GRANTS.—The aggregate amount of grants made to a State under this section shall not exceed 90 per centum of the amount apportioned to such State for fiscal year 1990 under section 402.

"(6) ELIGIBILITY FOR GRANTS.—

"(A) A State is eligible in a fiscal year for a grant under this section only if the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State implements in such fiscal year a traffic safety program described in subsection (b).

"(B) A State is eligible for a grant under this section in a fiscal year succeeding the first fiscal year in which a State receives a grant under this section only if the State in the preceding fiscal year—

"(i) has in effect at all times a State law described in paragraph (1)(A) and achieves a rate of compliance with such law of not less than 75 per centum; and

"(ii) has in effect at all times a State law described in paragraph (1)(B) and achieves a rate of compliance with such law of not less than 50 per centum.

"(C) A State is eligible for a grant under this section in a fiscal year succeeding the second fiscal year in which a State receives a grant under this section only if the State in the preceding fiscal year—

"(i) has in effect at all times a State law described in paragraph (1)(A) and achieves a rate of compliance with such law of not less than 85 per centum; and

"(ii) has in effect at all times a State law described in paragraph (1)(B) and achieves a rate of compliance with such law of not less than 70 per centum.

"(c) MEASUREMENTS OF RATES OF COMPLIANCE.—For the purposes of subsection (b) (2) and (3), a State shall measure compliance with State laws described in subsection (b)(1) using methods which conform to guidelines to be issued by the Secretary ensuring that such measurements are accurate and representative.

"(d) DEFINITIONS.—For the purposes of this section, the following definitions apply:

"(1) The term 'child restraint system' means a device which is designed for use in a passenger vehicle to restrain, seat, or position a child who weighs 50 pounds or less.

"(2) The term 'motorcycle' means a motor vehicle with motive power which is designed to travel on not more than 3 wheels in contact with the surface.

"(3) The term 'passenger vehicle means a motor vehicle with motive power which is designed for transporting 10 individuals or less, including the driver, except that such term shall not include a vehicle which is constructed on a truck chassis, a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under a Federal motor vehicle safety standard to be equipped with a belt system.

"(4) The term 'safety belt' means—

"(A) with respect to open-body vehicles and convertibles, and occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt; and

"(B) with respect to other passenger vehicles, an occupant restraint system consisting of integrated lap and shoulder belts.".

"(e) AUTHORITY.—All provisions of chapter 1 of this title that are applicable to Surface Transportation Program funds, other than provisions relating to the apportionment formula, shall apply to funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section and except that sums authorized by this section shall remain available until expended.".

(b) STUDY.—The Secretary shall conduct a study of restrained and unrestrained individuals injured in motor vehicle crashes and of helmeted and non-helmeted motorcyclists injured in motorcycle crashes, collecting and analyzing data from regional trauma systems regarding differences in: The severity of injuries; acute, rehabilitative and long-term medical costs, including the sources of reimbursement and the extent to which these sources cover actual costs; and mortality and morbidity outcomes. Of the amounts authorized to be appropriated for fiscal year 1992 to carry out the requirements of this section, not less than $5,000,000 shall be available until expended to carry out this subsection. The Secretary shall report the results of this study to Congress not later than 40 months after the date of enactment of this Act. Approval by the Secretary of

Transportation of the payment of such sums shall establish a contractual obligation of the United States to pay such sums.

(c) REGULATIONS.—Not later than one hundred and eighty days after the date of the enactment of this Act, the Secretary shall issue regulations to carry out section 153 of title 23, United States Code.

(d) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking:

"Sec. 153. [Repealed.].".

and inserting in lieu thereof:

"Sec. 153. Use of Safety Belts and Motorcycle Helmets.".

SEC. 123. CREDIT FOR NON-FEDERAL SHARE.

(a) ELIGIBILITY.—A State may use as a credit toward the non-Federal matching share requirement for all programs under this Act and title 23, United States Code, those funds that are generated and used by public, quasi-public and private agencies to build, improve, or maintain transportation infrastructure that serves the public purpose of interstate commerce. Such public, quasi-public or private agencies shall have built, improved, or maintained such transportation infrastructure without Federal funds.

(b) MAINTENANCE OF EFFORT.—The credit for any non-Federal share shall not reduce nor replace State monies required to match Federal funds for any program pursuant to this Act or title 23, United States Code. In receiving a credit for non-Federal capital expenditures under this section, a State shall enter into such agreements as the Secretary may require to ensure that such State will maintain its non-Federal transportation capital expenditures at or above the average level of such expenditures for the preceding three fiscal years.

(c) TREATMENT.—Use of such credit for a non-Federal share shall not expose such agencies from which the credit is received to additional liability, additional regulation or additional administrative oversight. When credit is applied from chartered multi-State agencies, such credit shall be applied equally to all charter States. The public, quasi-public, and private agencies from which the credit for which the non-Federal share is calculated shall not be subject to any additional Federal design standards, laws or regulations as a result of providing non-Federal match other than those to which such agency is already subject.

SEC. 124. ACQUISITION OF RIGHTS-OF-WAY.

(a) RIGHT-OF-WAY REVOLVING FUND.—Section 108(c)(3) of title 23, United States Code, is amended by striking out "ten" and inserting in lieu thereof "twenty".

(b) EARLY ACQUISITION OF RIGHTS-OF-WAY.—Section 108 of title 23, United States Code, is further amended by adding subsection (d) as follows:

"(d) EARLY ACQUISITION OF RIGHTS-OF-WAY.—Federal funds may be used to participate in payment of the costs incurred by a State for the acquisition of rights-of-way, acquired in advance of any Federal approval or authorization, which are subsequently incorporated into a project, and the costs incurred by the State for the acquisition of land necessary to preserve environmental and scenic values. The Federal share payable of the costs shall be eligible for reimbursement out of funds apportioned to the State when the rights-of way acquired are incorporated into a project eligible for surface transportation funds, if the State demonstrates to the Secretary and the Secretary finds that—

"(1) any land acquired, and relocation assistance provided complied with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;

"(2) title VI, of the Civil Rights Act of 1964 has been complied with;

"(3) the State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and that the acquisition is certified by the Governor as consistent with the State plans prior to the acquisition;

"(4) the acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to section 135 of this Act;

"(5) the alternative for which the right-of-way is acquired is selected by the State pursuant to regulations to be issued by the Secretary, which provide for the consideration of the environmental impacts of various alternatives;

"(6) prior to the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act has been completed for the project for which the right-of-way was acquired by the State, and the acquisition has been approved by the Secretary under this Act, and in compliance with section 4(f) of the Department of Transportation Act, section 7 of the Endangered Species Act, and all other applicable environmental laws shall be identified by the Secretary in regulations; and

"(7) prior to the time that the cost incurred by a State is approved for Federal participation, both the Secretary and the Administrator of the Environmental Protection Agency have concurred that the property acquired in advance of Federal approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location.".

(c) CONFORMING AMENDMENTS.—Section 108 of title 23, United States Code, is further amended—

(1) in subsection (a), by striking out "on any of the Federal-aid highway systems, including the Interstate System," each of the two places it appears;

(2) in subsection (c)(2), by striking "on any Federal-aid system"; and

(3) in subsection (c)(3) by striking "on the Federal-aid system of which such project is to be a part".

SEC. 125. TRANSPORTATION IN PARKLANDS.

(a) IN GENERAL.—Not later than twelve months after the date of enactment of this Act, the Secretary, in consultation with the Secretary of the Interior, shall submit to the Congress a study of alternative transportation modes for use in the National Park System. Such study shall consider the economic and technical feasibility, environmental effects, projected costs and benefits as compared to the costs and benefits of existing transportation systems, and general suitability of transportation modes that would provide efficient and environmentally sound ingress to and egress from National Park lands. Such study shall also consider methods to obtain private capital for the construction of such transportation modes and related infrastructure.

(b) AUTHORIZATION OF APPROPRIATIONS.—From within the sums authorized to be appropriated for subsection 202(d) of title 23, United States Code, $300,000 shall be made available to carry out this section.

SEC. 126. TRAFFIC CONTROL STANDARDS.

The Secretary shall revise the Manual of Uniform Traffic Control Devices to include—

(a) a standard for a minimum level of retroreflectivity that must be maintained for pavement markings and signs, which shall apply to all roads open to public travel;

(b) a standard to define the roads that must have a center line or edge lines or both, provided that in setting such standard the Secretary shall consider the functional classification of roads, traffic volumes, and the number and width of lanes.

SEC. 127. USE OF ASPHALT RUBBER PAVEMENT.

(a) Beginning on the date three years after the date of enactment of this Act, the Secretary of Transportation shall make no grant to any State under title 23 of the United States Code, other than projects or grants for safety where the Secretary determines that the principal purpose of the project is an improvement in safety that will result in a significant reduction in or avoidance of accidents, for any year unless the State shall have submitted to the Secretary a certification that the asphalt pavement laid in the State in such year and financed in whole or part by such grants shall satisfy the minimum utilization requirement for asphalt rubber pavement established by this section. The Secretary may modify the minimum utilization requirement for asphalt rubber pavement during a phase-in period, if the Secretary determines that such phase-in period is necessary to develop production and application facilities for asphalt rubber pavement. Such phase-in period shall not extend beyond the date six years after the date of enactment of this section. The Secretary may increase the minimum utilization requirement for asphalt rubber pavement to be used in federally-assisted highway projects to the extent it is technologically and economically feasible to do so and if an increase is appropriate to assure markets for the reuse and recycling of scrap tires.

(b) The Secretary may set aside the provisions of this section for any three-year period on a determination, made in concurrence with the Administrator of the Environmental Protection Agency with respect to paragraphs (1) and (2), that there is reliable evidence indicating—

(1) that manufacture, application or use of asphalt rubber pavement substantially increases risks to human health or the environment as compared to the risks associated with conventional pavement;

(2) that asphalt rubber pavement cannot be recycled to the same degree as conventional pavement; or

(3) that asphalt rubber pavement does not perform adequately as a material for the construction or surfacing of highways and roads.

(c) Any determination made to set aside the requirements of this section may be renewed for an additional three-year period by the Secretary, with the concurrence of the Administrator with respect to determinations made under subsections (b)(1) and (b)(2). Any determination made with respect to subsection (b)(3) may be made for specific States or regions considering climate, geography and other factors that may be unique to the State or region and that would prevent the adequate performance of asphalt rubber pavement in such State or region.

(d) The minimum utilization requirement for asphalt rubber pavement in federally-assisted highway projects shall be not less than an average of six pounds of rubber derived from scrap tires for each one ton of finished asphalt pavement used in federally-assisted highway projects in the State. The Secretary may grant a State credit toward the minimum utilization requirement for

volumes of asphalt rubber pavement used in other road and construction projects and for asphalt rubber pavement containing rubber at rates less than or greater than six pounds per ton: *Provided*, That the total amount of rubber used in asphalt pavement containing rubber in the State in any year is at least equivalent to the amount that would be used if 100 per centum of the pavement used in federally-assisted highway projects in the State contained six pounds of rubber per ton of finished pavement.

(e) The Secretary shall establish a minimum utilization requirement for asphalt rubber pavement less than the minimum otherwise required by subsection (d) in a particular State, upon the request of such State and with the concurrence of the Administrator of the Environmental Protection Agency, if the Secretary determines that there is not a sufficient quantity of scrap tires available prior to disposal in the State to meet the minimum utilization requirement established by subsection (d) and each of the other recycling and processing uses, including retreading, for which scrap tires are required.

(f) For purposes of this section—

(1) the term "process" means the utilization of tires to reclaim material or energy value;

(2) the term "recycle" means to process scrap tires to produce usable materials other than fuels;

(3) the term "asphalt rubber pavement" means any hot mix asphalt paving mixture which contains rubber derived from scrap tires, is produced using the wet or dry process and is used for a pavement base, surface course, or stress absorbing membrane interlayer;

(4) the term "stress absorbing membrane interlayer" means a process of spray applying asphalt rubber pavement prior to the overlayment of conventional asphalt pavement to reduce reflective cracking and to waterproof the roadway.

(g) The Secretary shall, in cooperation with the Administrator of the Environmental Protection Agency, conduct a program of research to determine—

(1) the public health and environmental risks associated with the production and use of asphalt rubber pavement;

(2) the performance of the asphalt rubber pavement under various climate and use conditions; and

(3) the degree to which asphalt rubber pavement can be recycled.

The research program required by this subsection shall be completed not later than three years after the date of enactment of this Act. The Secretary is authorized to use funds pursuant to sections 103(b) and 115 (making amendments to section 307 of title 23, United States Code) to carry out the research required by this subsection.

SEC. 128. RIGHT-OF-WAY REVOLVING FUND.

Section 108 of title 23, United States Code, is amended—

(a) in subsection (a) by striking out "on any of the Federal-aid highway systems, including the Interstate System" in each of the two places it appears; by striking out "State highway department" in each of the two places it appears and inserting in lieu thereof "State transportation department"; and by inserting "or passenger rail facility" after "road"; and

(b) in subsection (c) by inserting "and passenger rail facilities" after "highways" in paragraph (2); by striking "on any Federal-aid system" in paragraph (2); by striking "State highway department" and inserting in lieu thereof "State transportation department" in paragraph (2); by inserting "or passenger rail facility" after "highway" in each of the two places it appears in paragraph (3); and by striking "on the Federal-aid system of which such project is to be a part" in paragraph (3).

SEC. 129. SCENIC AND HISTORIC HIGHWAYS.

There is hereby created a National Scenic and Historic Byways Program, and an Office of Scenic and Historic Byways within the Federal Highway Administration, which Office shall administer the program. The Office shall provide technical assistance to the States and shall provide grants for the planning, design and development of State scenic byway programs. The Secretary, in consultation with the Secretaries of Agriculture, Interior, and Commerce, and other interested parties, shall establish criteria for roads to be designated as part of an All American Roads program. The Secretary shall designate the roads to be included in the All American Roads program. Roads considered for such designation shall be nominated by the States and Federal agencies. For all State-owned roads nominated by Federal agencies, the State shall concur in the nomination. The sum of $5,000,000 per year is authorized to be appropriated for the purposes of carrying out this section. The Secretary shall establish criteria for allocating such funds to the States.

SEC. 130. NATIONAL HIGHWAY SYSTEM.

(a) Within two years of the date of enactment of this Act, the Secretary shall submit to the Congress a proposal for a National Highway System to provide an interconnected system of principal arterial routes which will serve major population centers, ports, airports, international border crossings, and other major travel destinations; meet national defense requirements; and serve interstate and interregional travel. The National Highway System shall consist of highways on the Interstate System and other specified urban and rural principal arterials, including toll facilities.

(b) During the two year period prior to the submission of the proposed National Highway System to Congress, the interim National Highway System shall consist of the Interstate System and such urban and rural principal arterials (including toll facilities) as designated by each State. Each State shall expend at least 17.5 percent of the amounts authorized by section 103(b)(1) of this Act for each of the fiscal years 1992 and 1993 on such interim National Highway System.

(c) A final National Highway System submitted to Congress by the Secretary shall be designated in accordance with guidelines issued by the Secretary which provide for equitable allocation of mileage among States. The final system shall be designated by each State in consultation with regional and local officials, with the approval of the Secretary. Ninety days after submission of the proposed National Highway System to Congress, each State shall expend at least 17.5 percent of the amounts authorized by section 103(b)(1) of this Act for each of the fiscal years 1994 through 1996 on the system so designated in the report to Congress or on such system as is modified by an Act of Congress. Amounts authorized by section 103(b)(1) of this Act do not include any amounts transferred to the Surface Transportation Program from the Interstate Maintenance Program, or any other program.

(d) If a State certifies to the Secretary that apportionments required to be spent on the National Highway System pursuant to this section are in excess of amounts needed to adequately maintain the National Highway System routes within the State as determined by the Bridge Management System and Pavement Management System under section 135(a) of title 23, as amended by this Act, the State may transfer up to 20 percent of these amounts for any project eligible under the Surface Transportation Program.

SEC. 131. DEFINITIONS.

(a) NEW DEFINITIONS.—Section 101(a) of title 23, United States Code, is amended adding definitions for "carpool project", "hazard elimination", "magnetic levitation system", "metropolitan area", "open to public travel", "operational improvement", "public authority", "public lands highway", "railway-highway crossing", "reconstruction", and "transportation enhancement activities" as follows:

"The term 'carpool project' means any project to encourage the use of carpools and vanpools, including but not limited to provision of carpooling opportunities to the elderly and handicapped, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use for preferential parking for carpools.

"The term 'hazard elimination' means the correction or elimination of hazardous locations, sections, or elements, including roadside obstacles and unmarked or poorly marked roads which may constitute a danger to motorists, bicyclists or pedestrians.

"The term 'magnetic levitation system' means any facility (including vehicles) using magnetic levitation for transportation of passengers or freight that is capable of operating at high speeds, and capable of operating along Interstate highway rights of way.

"The term 'metropolitan area' means an area so designated pursuant to section 134.

"The term 'open to public travel' means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulations other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

"The term 'operational improvement' means a capital improvement other than (1) a reconstruction project; (2) additional lanes except high occupancy vehicle lanes; (3) interchange and grade separations; or (4) the construction of a new facility on a new location. The term includes the installation of traffic surveillance and control equipment; computerized signal systems; motorist information systems, integrated traffic control systems; incident management programs; transportation demand management facilities, strategies, and programs; high occupancy vehicle preferential treatments including the construction of high occupancy vehicle lanes; and spot geometric and traffic control modifications to alleviate specific bottlenecks and hazards.

"The term 'public authority' means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate or maintain toll or toll-free facilities.

"The term 'public lands highway' means a forest road under the jurisdiction of and maintained by a public authority and open

to public travel, or any highway through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by, a public authority and open to public travel.

"The term 'railway-highway crossing project' means any project for the elimination of hazards of railway-highway crossings, including the protection or separation of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings.

"The term 'reconstruction' means the addition of travel lanes and the construction and reconstruction of interchanges and over crossings, including acquisition of right-of-way where necessary.

"The term 'transportation enhancement activities' means, with respect to any project or the area to be served by the project, highway safety improvement projects other than repaving projects, railway-highway crossing projects, provision of facilities for pedestrians and bicycles, acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs, landscaping and other scenic beautification, historic preservation, rehabilitation and operation of historic transportation buildings, structures or facilities including historic railroad facilities and canals, preservation of abandoned railway corridors including the conversion and use thereof for pedestrian or bicycle trails, control and removal of outdoor advertising, archaeological planning and research, and mitigation of water pollution due to highway runoff.".

(b) CONFORMING AMENDMENTS.—

(1) The definition for "highway" is amended by inserting "scenic easements" after "and also includes".

(2) The definitions for "Federal-aid highways", "Federal-aid system", "Federal-aid primary system", "Federal-aid secondary system", "Federal-aid urban system", "forest highway", "project", and "urban area" are repealed.

(3) The definition for "Indian reservation roads" is amended by striking ", including roads on the Federal-aid systems,".

(4) The definition for "park road" is amended by inserting ", including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles," before "that is located in".

SEC. 132. FUNCTIONAL RECLASSIFICATION.

A functional reclassification, which shall be updated periodically, should be undertaken by each State (as that term is defined in section 101 of title 23, United States Code), the United States Virgin Islands, American Samoa, Guam and the Commonwealth of the Northern Mariana Islands, by September 30, 1992, and shall be completed by September 30, 1993 in accordance with guidelines that will be issued by the Secretary. The functional reclassification shall classify all public roads (as that term is defined in section 101 of title 23, United States Code).

SEC. 133. REPEAL OF CERTAIN SECTIONS OF TITLE 23, UNITED STATES CODE.

(a) The following portions of title 23, United States Code, are hereby repealed, including the chapter analyses relating thereto—

(1) section 105, relating to programs;

(2) section 117, relating to certification acceptance;

(3) section 122, relating to bond retirement;

(4) section 126, relating to diversion of funds;

(5) section 137, relating to parking facilities;

(6) section 146, relating to carpools;

(7) section 147, relating to priority primary projects;

(8) section 148, relating to a national recreational highway;

(9) section 150, relating to urban system funds;

(10) section 155, relating to lake access highways;

(11) section 201, relating to authorizations;

(12) section 212, relating to the Inter-American Highway;

(13) section 216, relating to the Darien Gap Highway;

(14) section 309, relating to foreign countries;

(15) section 310, relating to civil defense;

(16) section 311, relating to strategic highway improvements;

(17) section 312, relating to military officers;

(18) section 318, relating to highway relocation; and

(19) section 320, relating to bridges on Federal dams.

SEC. 134. CONFORMING AND TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 23, UNITED STATES CODE.—Title 23, United States Code, is amended as follows:

(1) Section 103 is amended as follows:

(A) Subsections (a), (b), (c), (d), and (g) are repealed.

(B) Paragraph (e)(1) is amended by striking "All highways or routes included in the Interstate System as finally approved, if not already coincident with the primary system, shall be added to said system without regard to the mileage limitation set forth in subsection (b) of this section.".

(C) Paragraph (e)(4)(B) is amended by striking the last two sentences and inserting instead "Each highway project constructed under this paragraph shall be subject to the provisions of this title applicable to highway projects constructed under the Surface Transportation Program.".

(D) Paragraph (e)(4)(E)(i) is amended by striking "for the fiscal year for which apportioned or allocated, as the case may be, and for the succeeding fiscal year" and by inserting in lieu thereof "until expended".

(E) Paragraphs (e)(4)(H)(i) and (e)(4)(H)(iii) are amended by striking "and 1991" the three places it appears and inserting instead "1991, 1992, 1993, 1994 and 1995".

(F) Subsection (f) is amended to read as follows:

"(f) The Secretary shall have authority to approve in whole or in part the Interstate System, or to require modifications or revisions thereof.".

(2) Section 104 is amended as follows:

(A) Subsection (b)(6) is repealed.

(B) Subsections (c) and (d) are repealed.

(3) Section 106 is amended as follows:

(A) Subsection (a) is amended by striking "117" and inserting instead "133".

(B) Subsection (b) is repealed.

(C) Subsection (d) is amended by striking "on any Federal-aid system".

(4) Section 109 is amended as follows:

(A) Subsection (a) is amended by striking "on any Federal-aid system".

(B) Subsection (c) is repealed.

(C) Subsection (i) is amended by striking "on a Federal-aid system" and "on any Federal-aid system"; and by striking "the Federal-aid system on which such project will be located".

(D) Paragraph (l)(1) is amended by striking "on any Federal-aid system".

(5) Section 112 is amended by striking subsection (f).

(6) Section 113 is amended—

(A) by striking "on the Federal-aid systems, the primary and secondary, as well as their extensions in urban areas, and the Interstate System,";

(B) by striking "upon the Federal-aid systems,"; and

(C) by striking "on any of the Federal-aid systems".

(7) Section 114 is amended as follows:

(A) Subsection (a) is amended by (1) striking "located on a Federal-aid system" and inserting instead "constructed under this chapter" and (2) striking "117" and inserting "133".

(B) Paragraph (b)(3) is amended by striking "located on a Federal-aid system" and inserting instead "under this chapter".

(8) Section 115 is amended as follows:

(A) The title of subsection (a) is amended by striking "URBAN, SECONDARY," and inserting instead "SURFACE TRANSPORTATION PROGRAM,".

(B) Subparagraph (a)(1)(A)(i) is amended by striking "section 104(b)(2), section 104(b)(6)" and inserting instead "section 104(b)(1)".

(C) The title of subsection (b) is amended by striking "AND PRIMARY".

(D) Paragraph (b)(1) is amended (i) by striking "the Federal-aid primary system or"; (ii) by striking "104(b)(1) or"; and (iii) by striking ", as the case may be,".

(9) Section 116 is amended as follows:

(A) Subsection (a) is amended by striking "The State's obligation to the United States to maintain any such project shall cease when it no longer constitutes a part of a Federal-aid system".

(B) Subsection (b) is amended by striking "on the Federal-aid secondary system, or within a municipality," and inserting instead "within a county or municipality".

(10) Section 120 is amended as follows:

(A) Subsection (c) is amended by striking the last sentence.

(B) Subsection (f) is amended by striking "project on a Federal-aid highway system, including the Interstate System, shall not exceed the Federal share payable on a project on such system as provided in subsections (a) and (c) of this section" and inserting instead "project on the Interstate System shall not exceed the Federal share payable on a project on that system as provided in subsection (c) of this section and any project off the Interstate System shall not exceed the Federal share payable as provided in subsection (a) of this section".

(C) Subsection (k) is amended by striking "for any Federal-aid system" and inserting instead "under section 104"; by striking ", and 155 of this title and for those priority primary routes under section 147"; and by striking "and for funds allocated under the provisions of section 155".

(D) Subsection (m) is repealed.

(11) Section 121(c) is amended by inserting "For projects obligated under section 106" in two places before the word "No"; and by striking "located on a Federal-aid system".

(12) Section 123 is amended by striking "on any Federal-aid system".

(13) Section 124 is amended by striking "of the Federal-aid systems" and inserting in lieu thereof "public roads or bridges except roads functionally classified as local or rural minor collector".

(14) Section 125 is amended as follows:

(A) Subsection (b) is amended (i) by striking "highways on the Federal-aid highway systems, including the Interstate System" and inserting instead "public roads except roads functionally classified as local or rural minor collector" and (ii) by striking "au-

thorized on the Federal-aid highway systems, including the Interstate System" and inserting instead "authorized on public roads except roads functionally classified as local or as rural minor collector".

(B) Subsection (c) is amended by striking ", whether or not such highways, roads, or trails are on any of the Federal-aid highway systems".

(15) Section 130 is amended by striking subsections (a), (e), (f), and (h), and by renumbering the remaining sections accordingly.

(16) Section 139 is amended as follows:

(A) Subsection (a) is amended (i) by striking "on the Federal-aid primary system"; (ii) by striking "sections 104(b)(1) and" and inserting instead "section"; and (iii) by striking "rehabilitating and reconstructing" and inserting instead "and rehabilitating".

(B) Subsection (b) is amended (i) by striking "on the Federal-aid primary system"; (ii) by striking "sections 104(b)(1) and" and inserting instead "section"; (iii) by striking "rehabilitating and reconstructing" and inserting instead "and rehabilitating"; and (iv) by striking "section" in the last sentence and inserting instead "subsection".

(C) Subsection (c) is amended (i) by striking "on the Federal-aid primary system"; (ii) by striking "sections 104(b)(1) and" and inserting instead "section"; and (iii) by striking "restoration, and reconstruction" and inserting instead "and restoration".

(17) Section 140 is amended as follows:

(A) Subsection (a) is amended by striking "on any of the Federal-aid systems,".

(B) Subsection (c) is amended by striking "104(a)" and inserting instead "104(b)".

(18) Section 141(b) is amended by striking "on the Federal-aid primary system, the Federal-aid urban system, and the Federal-aid secondary system" and inserting instead "on public roads except roads functionally classified as local or rural minor collector".

(19) Section 152 is amended by striking subsections (d) and (e).

(20) Section 157 is amended as follows:

(A) Subsection (b) is amended (i) by striking "primary, secondary, Interstate, urban" and inserting instead "Interstate, Surface Transportation Program" and (ii) by striking the period at the end of the last sentence and inserting instead "and section 104(a) of the Surface Transportation Efficiency Act of 1991.".

(B) Subsection (d) is amended by striking "154(f) or".

(21) Paragraph (a)(2) of section 158 is amended by striking "104(b)(2), 104(b)(5), and 104(b)(6)" and inserting instead "and 104(b)(5)".

(22) Section 215 is amended as follows:

(A) Clause (2) of subsection (c) is amended by inserting at the beginning "except as provided in section 129".

(B) Subsection (e) is repealed.

(C) Subsection (f) is amended by (1) striking "Federal-aid primary highway" and inserting instead "Surface Transportation Program" and by (2) striking "and provisions limiting the expenditure of such funds to the Federal-aid systems".

(23) Section 217 is amended as follows:

(A) Subsection (a) is amended by striking ", (2) and (6)", and by striking "paragraphs" and inserting in lieu thereof "paragraph".

(B) Subsection (b) is amended by striking ", (2) and (6)", and by striking "paragraphs" and inserting in lieu thereof "paragraph".

(24) Section 302(b) is amended by striking ", for the construction of projects on the Federal-aid secondary system, financed with secondary funds, and for the maintenance thereof".

(25) Section 304 is amended by striking "the Federal-aid highway systems, including the Interstate System" and inserting instead "Federal-aid highways".

(26) Section 315 is amended by striking "sections 204(d), 205(a), 206(b), 207(b), and 208(c)" and inserting instead "section 205(a)".

(27) Section 317(d) is amended by striking "on a Federal-aid system" and inserting instead "with Federal aid".

(28) Subsection (d) of section 402 is amended (A) by striking "Federal-aid primary highway" and inserting instead "Surface Transportation Program" and (B) by striking "and provisions limiting the expenditure of such funds to the Federal-aid system".

(29) Subsection (g) of section 408 is amended (A) by striking "Federal-aid primary highway" and inserting instead "Surface Transportation Program" and (B) by striking "and provisions limiting the expenditure of such funds to Federal-aid systems".

(b) AMENDMENTS TO THE HIGHWAY SAFETY ACT OF 1978.—Subsection (i) of section 209 of the Highway Safety Act of 1978 is amended by (1) striking "Federal-aid primary highway" and inserting instead "Surface Transportation Program" and by (2) striking "and provisions limiting the expenditure of such funds to the Federal-aid systems".

(c) AMENDMENTS TO THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982.—(1) Section 411 of the Surface Transportation Assistance Act of 1982 is amended as follows:

(A) Subsection (a) is amended by striking "Federal-aid Primary System highways" and inserting instead "highways which were designated as Federal-aid primary system highways before the enactment of the Surface Transportation Efficiency Act of 1991".

(B) Subsection (c) is amended by striking "Federal-aid Primary System highways" and inserting instead "highways which were designated as Federal-aid Primary System highways before the enactment of the Surface Transportation Efficiency Act of 1991".

(C) Subsection (e) is amended by striking "Federal-aid Primary System highways" and "Primary System highways" and inserting instead in two places "highways which were designated as Federal-aid Primary System highways before the enactment of the Surface Transportation Efficiency Act of 1991".

(2) Section 412(a) of the Surface Transportation Assistance Act of 1982 is amended by striking "Federal-aid Primary System highways" and inserting instead "highways which were designated as Federal-aid Primary System highways before the enactment of the Surface Transportation Efficiency Act of 1991".

(3) Section 416 of the Surface Transportation Assistance Act of 1982 is amended as follows:

(A) Subsection (a) is amended by striking "Federal-aid highway" in two places and inserting instead "highway which was on a Federal-aid system on the date of the enactment of the Surface Transportation Efficiency Act of 1991"; and by striking "Federal-aid Primary System highway" and inserting instead "highway which was on the Federal-aid Primary System on the date of enactment of the Surface Transportation Efficiency Act of 1991".

(B) Subsection (d) is amended by striking "Federal-aid highway" and inserting instead "highway which was on a Federal-aid system on the date of the enactment of the Surface Transportation Efficiency Act of 1991".

(d) AMENDMENTS TO TITLE 42, UNITED STATES CODE.—Section 5122(8)(B) of title 42, United States Code, is amended by striking "any non-Federal-aid street, road or highway" and inserting instead "any street, road or highway not eligible for emergency relief under title 23, United States Code.".

(e) OPERATION LIFESAVER.—Whenever apportionments are made under section 104(a) of title 23, United States Code, the Secretary shall deduct such sums as the Secretary deems necessary, not to be less than $250,000 per fiscal year, for carrying out Operation Lifesaver.

(f) TECHNICAL CORRECTION TO PUBLIC LAW 101-516.—Section 333 of Public Law 101-516 is amended by—

(1) inserting the following after "SEC. 333.":

"Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 159. Revocation or suspension of the driver's license of individuals convicted of drug offenses

"(a)(1)";

(2) by striking the second sentence of such section; and

(3) Section 104 of title 23, United States Code, is amended by inserting subsections (a)(2), (a)(3), (b) and (c) of such section as those subsections existed in title 23, United States Code, immediately prior to enactment of Public Law 101-516.

SEC. 135. RECODIFICATION.

The Secretary shall, by October 1, 1993, prepare a recodification of title 23, United States Code, related Acts and statutes and submit the recodification to the Congress for consideration.

SEC. 136. TIMBER BRIDGE AND TIMBER RESEARCH PROGRAM.

(a) The Secretary of Transportation is hereby authorized to establish a Timber Bridge Construction Discretionary Grant Program.

(1) Of the amount authorized per fiscal year for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 by section 103(b)(3) of the Surface Transportation Efficiency Act of 1991 (relating to the bridge program), $5,000,000 shall be available for obligation at the discretion of the Secretary for such program. The Federal share payable on any bridge construction project carried out under this section shall be 80 per centum of the cost of such construction.

(2) States may submit applications for construction grants in such form as required by the Secretary, who shall select and approve such grants based on the following criteria:

(A) bridge design shall have both initial and long term structural and environmental integrity;

(B) bridge design should utilize timber species native to the State or region;

(C) innovative design should be utilized that has the possibility of increasing knowledge, cost effectiveness, and future use of such design; and

(D) environmental practice for preservative treated timber should be utilized and construction techniques which comply with all environmental regulations.

(b) The Secretary of Transportation is hereby authorized to establish a Program of Research on Wood Use in Transportation Structures.

(1) Of the amount authorized per fiscal year for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 by section 103(b)(10) of the Surface Transportation Efficiency Act of 1991 (relating to Federal Highway Administration Research Programs), $1,000,000 shall be available for obligation at the discretion of the Secretary for such program. The Federal share payable on any research grant shall be 100 per centum.

(2) The Secretary of Transportation, through the Federal Highway Administration, may make grants to, or contract with States, other Federal agencies, universities, private businesses, nonprofit organizations, and any research or engineering entity for research on any one of the following areas:

(A) timber bridge systems which involve development of new, economical bridge systems;

(B) development of engineering design criteria for structural wood products which improve methods for characterizing lumber design properties;

(C) preservative systems which demonstrate new alternatives, and current treatment processes and procedures optimized for environmental quality in the application, use and disposal of treated wood.

(D) alternative transportation system timber structures demonstrating the development of applications for railing, sign, and lighting supports, sound barriers, culverts, retaining walls in highway applications, docks, fresh and salt water marine facilities and railway bridges; and

(E) rehabilitation measures which demonstrate effective, safe, reliable methods for rehabilitating existing structures.

(3) The Secretary, through the Federal Highway Administration, shall assure that the information and technology resulting from research is transferred to State and local transportation departments and other interested parties.

SEC. 137. GROSS VEHICLE WEIGHT RESTRICTION.

(a) The fourth sentence of subsection 127(a) of title 23, is amended by adding after "thereof" the following: ", other than vehicles or combinations subject to subsection (d) of this section,".

(b) GROSS VEHICLE WEIGHT.—Section 127 of title 23, United States Code, is amended by adding a new subsection (d), to read as follows:

"(d)(1) A longer combination vehicle may continue to operate if and only if the Secretary of Transportation determines that the particular longer combination vehicle configuration was authorized by State officials pursuant to State statute or regulation conforming to this section and in actual, continuing lawful operation on or before June 1, 1991, or pursuant to section 335 of Public Law 101-516. All such operations shall continue to be subject to, at the minimum, all State statutes, regulations, limitations and conditions, including, but not limited to routing-specific and configuration-specific designations and all other restrictions, in force on June 1, 1991, except in Wyoming in which additional vehicle configurations not in actual operation on June 1, 1991, may be authorized by State law, unless otherwise directed, not later than the general election date in 1992, provided such vehicle configurations do not exceed 117,000 pounds gross vehicle weight and comply with the single axle, tandem axle, and bridge formula limits set forth in section 127(a) of title 23, United States Code. Nothing in this subsection shall prevent any State from further restricting in any manner or prohibiting the operation of longer combination vehicles otherwise authorized under this subsection, except that such restrictions or prohibitions shall be consistent with the requirements of sections 411, 412, and 416 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2311, 2312, and 2316). Any State further restricting or prohibiting the operations of longer combination vehicles shall, within 30 days, advise the Secretary of Transportation of such action and the Secretary shall publish a notice of such action in the Federal Register.

"(2) Within sixty days of the date of enactment of this Act, the Secretary shall publish in the Federal Register a complete list of those State statutes and regulations and of all limitations and conditions, including, but not limited to routing-specific configuration-specific designations and all other restrictions, governing the operation of longer combination vehicles otherwise prohibited under this subsection. No statute or regulation shall be included on the list published by the Secretary merely on the grounds that it authorized, or could have authorized, by permit or otherwise, the operation of longer combination vehicles, not in actual, continuing operation on or before June 1, 1991. Except as modified pursuant to the fourth sentence of paragraph (1) of this subsection, the list shall become final within a further sixty days after publication in the Federal Register. Longer combination vehicles may not operate on the National System of Interstate and Defense Highways except as provided in the list.

"(3) For purposes of this section, a longer combination vehicle is any combination of a truck tractor and two or more trailers or semitrailers which operate on the National System of Interstate and Defense Highways at a gross vehicle weight greater than eighty-thousand pounds.

"(4) Nothing in this subsection shall be construed to allow the operation on any segment of the National System of Interstate and Defense Highways of any commercial motor vehicle combination prohibited under section 411(j) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2311(j)).".

(c) Section 141(b) of title 23, United States Code, is amended by adding at the end the following new sentence: "Each State shall also certify that it is enforcing and complying with section 127(d) of this title and section 411(j) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2311(j).".

SEC. 138. VEHICLE LENGTH RESTRICTION.

Section 411 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2311) is amended by adding at the end the following new subsection:

"(j)(1) No State shall allow by statute, regulation, permit, or any other means, the operation on any segment of the National System of Interstate and Defense Highways and those classes of qualifying Federal-aid Primary System highways as designated by the Secretary, pursuant to subsection (e) of this section, of any commercial motor vehicle combination with two or more cargo carrying units (not including the truck tractor), whose cargo carrying units exceed, as determined by the Secretary—

"(A) the maximum combination trailer, semitrailer, or other type of length limitation authorized by statute or regulations of that State on or before June 1, 1991; or

"(B) the length of the cargo carrying units of those commercial motor vehicle combinations, by specific configuration, in actual, continuing lawful operation (including continuing seasonal operation) in that State on or before June 1, 1991.

"(2) For purposes of this subsection, the length of the cargo carrying units of a commercial motor vehicle combination is the length measured from the front of the first cargo carrying unit to the rear of the last cargo carrying unit.

"(3) Commercial motor vehicle combinations whose operations in a State are not prohibited under paragraph (1) of this subsection may continue to operate in such State on the highways described in paragraph (1) only if in compliance with, at the minimum, all State statutes, regulations, limitations, and conditions, including but not limited to routing-specific and configuration-specific designations and all other restrictions in force in such State on June 1, 1991. Nothing in this subsection shall prevent any State from further restricting in any manner or prohibiting the operation of any commercial motor vehicle combination subject to this subsection, except that such restrictions or prohibitions shall be consistent with the requirements of this section and of section 412 and section 416 (a) and (b) of this Act. Any State further restricting or prohibiting the operations of commercial motor vehicle combinations shall advise the Secretary within 30 days after such action and the Secretary shall publish a notice of such action in the Federal Register.

"(4) Within 60 days after the date of enactment of this subsection, the Secretary shall publish in the Federal Register a list of length limitations, as determined by the Secretary, applicable to commercial motor vehicle combinations operating in each State on the highways described in paragraph (1). The list shall indicate the applicable State statutes and regulations associated with such length limitations. The list shall become final within 60 days after publication in the Federal Register. Commercial motor vehicle combinations prohibited under paragraph (1) may not operate on the National System of Interstate and Defense Highways and other Federal-aid Primary System highways as designated by the Secretary. The list may be combined by the Secretary with the list required under section 127(d) of title 23, United States Code.

"(5) Nothing in this subsection shall be construed to allow the operation on any segment of the National System of Interstate and Defense Highways of any longer combination vehicle prohibited under section 127(d) of title 23, United States Code.

"(6) Nothing in this subsection shall be interpreted to affect in any way the operation of commercial motor vehicles having only one cargo carrying unit. Nor shall this subsection be interpreted to affect in any way the operation in a State of commercial motor vehicles with two or more cargo carrying units if such vehicles were in actual, continuing operation (including continuing seasonal operation) in that State on or before June 1, 1991, authorized under State statute, regulation, or lawful State permit.

"(7) As used in this subsection, 'cargo carrying unit' means any portion of a commercial motor vehicle combination (other than the truck tractor) used for the carrying of cargo, including a trailer, semitrailer, or the cargo carrying section of a single unit truck.".

SEC. 138A. NATIONAL MAXIMUM SPEED LIMIT.

(a) Section 141 of title 23, United States Code, is amended by striking subsection (a).

(b) Section 154 of title 23, United States Code, is amended to read as follows:

§ 154. National maximum speed limit

"(a) SPEED LIMIT—A State shall not have (1) a maximum speed limit on any public highway within its jurisdiction in excess of fifty-five miles per hour other than highways on the Interstate System located outside of an urbanized area, (2) a maximum speed limit on any highway within its jurisdiction on the Interstate System located outside of an urbanized area in excess of sixty-five miles per hour, (3) a maximum speed limit on any highway within its jurisdiction in excess of sixty-five miles per hour located outside of an urbanized area which is; (A) con-

structed to interstate standards in accordance with section 109(b) and connected to an interstate highway posted at sixty-five miles per hour; (B) a divided four-lane fully controlled access highway designed or constructed to connect to an Interstate highway posted at sixty-five miles per hour and constructed to design and construction standards as determined by the Secretary which provide a facility adequate for a speed limit of sixty-five miles per hour; or (C) constructed to geometric and construction standards adequate for current and probable future traffic demands and for the needs of the locality and designated by the secretary as part of the Interstate System in accordance with section 139(c) or (4) a speed limit on any other portion of a public highway within its jurisdiction which is not uniformly applicable to all types of motor vehicles using that portion of the highway, if on November 1, 1973, that portion of the highway had a speed limit which was uniformly applicable to all types of motor vehicles using it. A lower speed limit may be established for any vehicle operating under a special permit because of any weight or dimension of that vehicle including any load thereon. Clause (4) shall not apply to any portion of a highway, during the time that the condition of the highway, weather, an accident or other condition creates a temporary hazard to the safety of traffic on that portion of a highway.

"(b) SPEED DATA.—Each State shall submit to the Secretary speed-related data as the Secretary determines by rule is necessary for each twelve-month period ending on September 30. The data shall be collected in accordance with criteria to be established by the Secretary and shall include data on citations and travel speeds on public highways with speed limits posted at or above fifty-five miles per hour.

"(c) MOTOR VEHICLE DEFINED.—As used in this section the term "motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

"(d) CERTIFICATION.—Each State shall certify to the Secretary before January 1 of each year that it is enforcing all speed limits on public highways in accordance with this section. The Secretary shall not approve any project under section 106 in any State which has failed to certify in accordance with this subsection. In preparing a certification under this subsection, the State shall consider the speed-related data it submits to the Secretary under subsection (b).".

SEC. 139. ROAD SEALING ON RESERVATION ROADS.

Section 204(c) of title 23, United States Code, is amended by adding at the end the following new sentence: "Notwithstanding any other provision of this title, Indian reservation roads under the jurisdiction of the Bureau of Indian Affairs of the Department of the Interior shall be eligible to expend funds apportioned under this section from the Highway Trust Fund for the purpose of road sealing projects.".

SEC. 140. EMERGENCY RELIEF ADVANCES.

The Secretary shall advance emergency relief funds to the State of Washington for the replacement of a bridge on the Interstate System damaged by November 1990, storms notwithstanding the provisions of section 125 of title 23, United States Code: *Provided*, - That this provision shall be subject to the Federal Share provisions of section 120, title 23, of the United States Code. The State of Washington shall repay such advances to the extent that a final court judgment declares that damage to such bridges was a result of human error.

SEC. 140A. HIGHWAY CONSTRUCTION TRAINING.

Subsection (b) of section 140 of title 23, United States Code is amended by adding at the end thereof: "Notwithstanding any other provision of law, not to exceed one-fourth of 1 per centum of funds apportioned to a State for the Surface Transportation Program or the Bridge Program, may be available to carry out this subsection upon a request by the State highway department.".

SEC. 140B. EROSION CONTROL GUIDELINES.

(a) The Secretary of Transportation shall develop erosion control guidelines for States to follow in carrying out construction projects funded in whole or in part by this Act.

(b) Guidelines developed under subsection (a) shall not preempt any requirement made by or under State law if such requirement is more stringent than the guidelines.

(c) Guidelines developed under subsection (a) shall be consistent with the program of section 319 of the Clean Water Act and section 6217(g) of the Omnibus Budget Reconciliation Act of 1990.

SEC. 140C. INTERNATIONAL HIGHWAY TRANSPORTATION OUTREACH PROGRAM.

Chapter 1, of title 23, United States Code is amended by adding the following new section at an appropriate place:

"SEC. . INTERNATIONAL HIGHWAY TRANSPORTATION OUTREACH PROGRAM.

"(a) ACTIVITIES.—The Secretary is authorized to engage in activities to inform the domestic highway community of technological innovations abroad that could significantly improve highway transportation in the United States, to promote United States highway transportation expertise internationally, and to increase transfers of United States highway transportation technology to foreign countries. Such activities may include:

"(1) develop, monitor, assess, and domestically disseminate information about foreign highway transportation innovations that could significantly improve highway transportation in the United States;

"(2) research, development, demonstration, training, and other forms of technology transfer and exchange;

"(3) inform other countries about the technical quality of American highway transportation goods and services through participation in trade shows, seminars, expositions and other such activities;

"(4) offer those Federal Highway Administration technical services which cannot be readily obtained from the United States private sector to be incorporated into the proposals of United States firms undertaking foreign highway transportation projects. The costs for assistance shall be recovered under the terms of each project;

"(5) conduct studies to assess the need for or feasibility of highway transportation improvements in countries that are not members of the Organization for Economic Cooperation and Development as of the date of enactment, and in Greece and Turkey.

"(b) COOPERATION.—The Secretary may carry out the authority granted hereby, either independently, or in cooperation with any other branch of the United States Government, State or local agency, authority, association, institution, corporation (profit or nonprofit) foreign government, multi-national institution, or any other organization or person.

"(c) FUNDS.—The funds available to carry out the provisions of this section shall include funds deposited in a special account with the Secretary of the Treasury for such purposes by any cooperating organization or person. The funds shall be available for promotional materials, travel, reception and representation expenses necessary to carry out the activities authorized by this section. Reimbursements for services provided under this section shall be credited to the appropriation concerned.".

SEC. 140D. EDUCATION AND TRAINING PROGRAM.

Chapter 1 of title 23, United States Code, is amended by adding the following new section at an appropriate place.

"SEC. . EDUCATION AND TRAINING PROGRAM.

"(a) AUTHORITY.—The Secretary is authorized to carry out a transportation assistance program that will provide highway and transportation agencies, in (1) urbanized areas of 50,000 to 1,000,000 population and (2) rural areas, access to modern highway technology.

"(b) GRANTS AND CONTRACTS.—The Secretary may make grants and enter into direct contracts for education and training, technical assistance and related support services that will (1) assist rural local transportation agencies to develop and expand their expertise in road and transportation areas; improve roads and bridges; enhance programs for the movement of passengers and freight; and deal effectively with specific road related problems by preparing and providing training packages, manuals, guidelines and technical resource materials; (2) identify, package and deliver usable highway technology to local jurisdictions to assist urban transportation agencies in developing and expanding their ability to deal effectively with road related problems; and (3) establish, in cooperation with State transportation or highway departments and universities (A) urban technical assistance program centers in States with two or more urbanized areas of 50,000 to 1,000,000 population and (B) rural technical assistance program centers. The Secretary shall provide technical and financial support for the centers.".

SEC. 140E. NATIONAL HIGHWAY INSTITUTE.

Section 321 of title 23, United States Code, is amended to read as follows:

"SEC. 321. NATIONAL HIGHWAY INSTITUTE.

"(a) ESTABLISHMENT AND AUTHORITY TO CONDUCT TRAINING.—The Secretary shall establish and operate in the Federal Highway Administration a National Highway Institute hereinafter referred to as the 'Institute'. The Institute shall develop and administer, in cooperation with the State transportation or highway departments, and any national or international entity, training programs of instruction for Federal Highway Administration, State and local transportation and highway department employees, State and local police, public safety and motor vehicle employees, United States citizens and foreign nationals engaged or to be engaged in highway work of interest to the United States. Programs may include, but are not limited to courses in modern developments, techniques, management, and procedures, relating to highway planning, environmental factors, acquisition of rights-of-way, relocation assistance, engineering, safety, construction, maintenance, contract administration, motor carrier activities and inspection. The Secretary shall administer the authority vested in the Secretary by this title or by any other provision of law for the development and conduct of education and training programs relating to highways through the Institute.

"(b) SET ASIDE.—Not to exceed one-fourth of 1 percent of all Surface Transportation

Program funds apportioned to a State under this title shall be available for expenditure by the State highway department for payment of not to exceed 75 percent of the cost of tuition and direct educational expenses (but not travel, subsistence, or salaries) in connection with the education and training of State and local highway department employees as provided in this section.

"(c) FEDERAL RESPONSIBILITY.—Education and training of Federal, State and local highway employees authorized by this section shall be provided (1) by the Secretary at no cost to the States and local governments for those subject areas which are a Federal program responsibility; or (2) in any case where education and training are to be paid for under subsection (b) by the State, subject to the approval of the Secretary, through grants and contracts with public and private agencies, institutions, individuals, and the Institute: *Provided*, That private agencies and individuals shall pay the full cost of any education and training received by them.

"(d) TRAINING FELLOWSHIPS; COOPERATION; COLLECTION OF FEES.—The Institute is authorized, subject to approval of the Secretary, to engage in all phases of contract authority for training purposes authorized by this section including but not limited to the granting of training fellowships. The Institute is also authorized to carry out its authority independently or in cooperation with any other branch of the Government, State agency, authority, association, institution, corporation (profit or nonprofit), or any other national or international entity, or person. The Institute is authorized to establish and collect fees from any entity and place them in a special account for the purpose of this section.

"(e) FUNDS.—The funds required to carry out this section may be from the sums deducted for administration purposes under section 104(a). The provisions of section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), shall not be applicable to contracts or agreements made under the authority of this section. The sums provided pursuant to this subsection may be combined or held separate from the fees or memberships collected and be administered by the Secretary as a fund which shall be available until expended.

"(f) DEFINITION.—The term 'national and international entity' as used in this section is defined to mean any government or nongovernment, public or private, profit or nonprofit body, institution, corporation, agency, association, authority, State, Country, Province, City, County, local jurisdiction, or individual.".

SEC. 140F. USE OF ZEBRA MUSSELS IN INFRASTRUCTURE.

(a) Within 180 days of the date of enactment of this Act, the Secretary of Transportation shall begin studies to determine the feasibility of utilizing zebra mussels, Dreissena polymorpha, in aggregate or other materials used to construct transportation infrastructure. Within three years of the date of enactment of this Act the Secretary shall submit a report to the Congress on the feasibility of utilizing zebra mussels in aggregate or other materials used to construct transportation infrastructure. The Secretary shall continue feasibility studies beyond this date if necessary to determine long-term performance of materials incorporating zebra mussels.

(b) If the studies required under subsection (a) demonstrate the feasibility of using zebra mussels as a construction material, beginning four years after the enactment of this Act, the Secretary of Transportation shall make no grant to any State under title 23 of the United States Code, other than projects or grants that will result in a significant reduction in or avoidance of accidents, for any year unless the State shall have submitted to the Secretary a certification that zebra mussels have been utilized in construction of transportation infrastructure in all applications in which any increase in cost due to using zebra mussels is equal to or less than the cost of disposal of the zebra mussels in conformance with all applicable environmental regulations. The Secretary may establish a phase-in period, not to extend beyond the date seven years after the date of enactment of this Act, if the Secretary determines that such a phase-in period is necessary to establish technology or production facilities for utilizing zebra mussels in transportation infrastructure applications.

(c) The Secretary may set aside the provisions of this section for any three-year period on a determination that there is reliable evidence indicating—

(1) that zebra mussels do not perform satisfactorily as a material for the construction or surfacing of roads or other infrastructure construction applications; or

(2) that utilization of zebra mussels results in increased risk to the safety of motorists, construction workers, or maintenance personnel.

(d) Any determination made to set aside the requirements of this section may be renewed for an additional three-year period by the Secretary. Any determination made with respect to subsection (c) may be made for specific States or regions considering climate, geography, and other factors that may be unique to the State or region.

(e) The Secretary, at the request of a State, may exclude a certain percentage of the federally assisted highways in such State from these requirements, if the Secretary determines that there is not a sufficient volume of zebra mussels in the waters within or contiguous to the State to constitute a nuisance.

SEC. 140G. INFRASTRUCTURE INVESTMENT COMMISSION.

(a) ESTABLISHMENT OF COMMISSION.—There is established the Commission to Promote Investment in America's Infrastructure (hereafter referred to as the "Commission").

(b) COMPOSITION.—(1) The Commission shall be composed of seven members appointed as follows:

(A) two members appointed by the Majority Leader of the Senate;

(B) two members appointed by the Speaker of the House of Representatives;

(C) one member appointed by the President of the United States;

(D) one member appointed by the Minority Leader of the Senate; and

(E) one member appointed by the Minority Leader of the House of Representatives.

(2) Individuals appointed to the Commission shall have appropriate backgrounds in finance, construction lending, actuarial disciplines, pensions, and infrastructure policy disciplines.

(c) FUNCTION OF COMMISSION.—It shall be the function of the Commission to conduct a study for the purpose of determining the feasibility and desirability of creating a type of infrastructure security which would permit the investment of pension funds in funds utilized to design, plan, and construct infrastructures in the United States. The Commission can include recommendations as to private sector as well as other recommendations for innovating public policy alternatives to assist infrastructure investment at all levels of government.

(d) REPORT.—Within 180 days following the date of the enactment of this Act, the Commission shall report its findings and recommendations to the Congress and to the President of the United States.

(e) EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem, in the same manner as persons employed intermittently in the Government service are allowed under section 5703 of title 5, United States Code.

(f) COMMISSION STAFF.—Subject to such rules and regulations as may be adopted by the Commission, the Chairman may—

(1) appoint and fix compensation of an executive director, a general counsel, and such additional staff as is deemed necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code; and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent for the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(g) AUTHORIZATION.—There is authorized to be appropriated for the purposes of carrying out this section such sums as may be necessary for the Commission to carry out its functions.

(h) TERMINATION.—Effective 180 days following the date of submission of the report under subsection (d), this section shall be deemed repealed.

SEC. 140H. REGULATORY INTERPRETATION.

Section 635.410 of title 23, Code of Federal Regulations, and any similar regulation, ruling, or decision shall be applied as if to include coating.

SEC. 140I. CLEAR GASOLINE REQUIREMENT.

No refiner may enter into the common carrier pipeline system any gasoline that would preclude the addition of a legally waivered fuel or fuel additive unless the gasoline contains a legally waivered fuel or fuel additive in a quantity sufficient to meet the requirements of regulations issued pursuant to section 211 of the Clean Air Act (42 U.S.C. 7545).

SEC. 140J. NATIONAL DEFENSE HIGHWAYS.

(a) Upon certification by the Secretary, after consultation with the Secretary of Defense, that a particular highway or portion of such highway, located outside the territory of the United States, is important to the national defense, up to $20,000,000, as determined by the Secretary, shall be made available for the purposes of this section in fiscal year 1993, 1994, 1995, and 1996, from the Interstate Construction Program funds authorized under section 103(b)(5) of this Act.

(b) Funds made available under this section shall be available only for the reconstruction of any highway or portion thereof certified under subsection (a), and shall remain available until expended.

SEC. 140K. ALLOCATION FORMULA STUDY.

(a) The General Accounting Office in conjunction with the Bureau of Transportation Statistics created pursuant to section 115 of this Act, shall conduct a thorough study and recommend to the Congress within two years

after the date of enactment a fair and equitable apportionment formula for the allocation of Federal-aid highway funds that best directs highway funds to the places of greatest need for highway maintenance and enhancement based on the extent of these highway systems, their present use, and increases in their use.

(b) The results of this study shall be presented to the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation on or before January 1, 1994, and shall be considered by these committees as they reauthorize the surface transportation program in 1996.

SEC. 140L. STORM WATER PERMIT REQUIREMENTS.

(a) Notwithstanding the requirements of sections 402(p)(2) (B), (C), and (D) of the Federal Water Pollution Control Act, the Administrator of the Environmental Protection Agency shall not—

(1) require any municipality with a population of less than 100,000 to submit any part I general permit application or individual application (as described in a rulemaking published in the Federal Register on November 16, 1990) for a storm water discharge associated with any airport, powerplant or uncontrolled sanitary landfill owned or operated by the municipality prior to May 18, 1992 or any part II general permit application for such discharge prior to May 18, 1993, unless such permit is required by sections 402(p)(2) (A) or (E) of the Federal Water Pollution Control Act;

(2) require any municipality with a population of less than 100,000 to submit any permit application for a storm water discharge associated with any industrial activity other than an airport, powerplant or uncontrolled sanitary landfill owned or operated by the municipality prior to October 1, 1992, unless such permit is required pursuant to sections 402(p)(2) (A) or (E) of the Federal Water Pollution Control Act, and any deadlines established pursuant to regulation or Public Law 102–27 associated with such permit application requirements shall be delayed until after such date;

(3) enforce the requirements of any permit issued to a municipality with a population of 100,000 or greater solely for storm water discharges, other than permits associated with industrial activities owned or operated by the municipality and permits required by sections 402(p)(2) (A) or (E) of the Federal Water Pollution Control Act, prior to October 1, 1992.

(b) For purposes of this section an uncontrolled sanitary landfill is a landfill or open dump, whether in operation or closed, which does not meet the requirements for run-on and run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act.

(c) This section shall not be interpreted, construed or applied to affect any permit requirement or application deadlines for a storm water discharge established pursuant to sections 402(p)(2) (A) or (E) of the Federal Water Pollution Control Act or any permit for a storm water discharge associated with an industrial activity not owned or operated by a municipality.

(d) The Administrator shall modify permit application deadlines applicable to storm water discharges associated with industrial activities owned or operated by municipalities with populations of 100,000 or greater to assure that such deadlines are coincident with application deadlines for systemwide permits required for such municipalities and associated with storm water discharges from other than industrial facilities.

SEC. 140M. INVESTIGATION AND REPORT.

(a) The Secretary of Transportation shall conduct an investigation into the feasibility of prescribing rules with respect to multilane, limited access, Federal-aid highways to do the following:

(1) Prohibit trucks weighing in excess of 10,000 pounds gross weight from using the furthest left lane.

(2) Restrict all such trucks to the furthest right lane, except that such trucks may use the lane adjacent to the furthest right lane to pass.

(b) In conducting the investigation described in subsection (a), the Secretary of Transportation shall consider innovative ways to separate truck traffic from other vehicle traffic on highways taking into consideration the effect on safety, congestion management, other relevant issues, and the cost of each such innovation.

(c) The Secretary of Transportation shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives a report setting forth the findings of the study conducted under subsection (a), within one year from the date of enactment of this Act.

SEC. 140N. REPORT ON THE USE OF OXYGENATED FUELS IN CERTAIN CITIES AND METROPOLITAN STATISTICAL AREAS.

Not later than 12 months after the date of the enactment of this Act, the Secretary of Transportation, acting through the Administrator of the Federal Highway Administration, and in consultation with the Administrator of the Environmental Protection Agency, shall submit to the Congress a report on the feasibility and effectiveness of requiring, during the period from October 1 through March 31, in all cities and metropolitan statistical areas (as established by the Office of Management and Budget) with a population of 250,000 or more, the use of oxygenated fuels (with a percentage of 2.7 or greater).

SEC. 140O. YOUTH JOBS HIGHWAY BEAUTIFICATION PROGRAM.

(a) AUTHORITY.—A State may use not to exceed 0.2 percent of the amounts appropriated to such State under section 104 of title 23, United States Code, to establish a State program to employ eligible economically disadvantaged individuals during the employment period to perform highway landscaping and beautification activities.

(b) ELIGIBLE ECONOMICALLY DISADVANTAGED INDIVIDUALS.—To be eligible to be employed under a State program established under subsection (a), an individual shall—

(1) have an income, or be a member of a family with a family income, that is below 100 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) for an individual or a family of similar size; and

(2) be a resident of the State.

Preference shall be given to individuals meeting the requirements of this subsection who are between the ages of 18 and 20.

(c) EMPLOYMENT ACTIVITIES.—Individuals may be employed under a State program established under subsection (a) to perform highway landscaping and beautification activities within the State that may include—

(1) activities directed at improving the scenic landscaping at highway rights-of-way and rest areas;

(2) trash pick-up and collection activities along roadsides;

(3) participation in programs related to traveler information (including signage); and

(4) other appropriate activities.

(d) ADMINISTRATION.—

(1) STATE CONTRIBUTION.—To be eligible to use the amounts referred to in subsection (a) to establish a State program, a State shall agree, with respect to the costs incurred by the State in carrying out such program, to make available (directly or through donations from public or private entities) non-Federal contributions towards such costs in an amount equal to 5 percent of such costs.

(2) LIMITATION.—A State shall not use in excess of 5 percent of amounts made available to such State under subsection (a) to administer the State program.

(3) FEDERAL OVERSIGHT.—The State official responsible for administering the program established by the State under subsection (a) shall annually prepare and submit to the Secretary of Transportation a report containing a description of such program, including—

(A) the costs incurred in implementing such program;

(B) the number of individuals employed under such program; and

(C) the types of activities performed by such individuals.

(e) NONDISPLACEMENT AND GRIEVANCE PROCEDURE.—The grievance procedures and nondisplacement requirements contained in sections 176(f) and 177(b) of the National and Community Service Act of 1990 shall apply to State programs established under this section, insofar as they are applicable, except that all references to "this title" in such sections shall be deemed to be a reference to this section.

(f) EMPLOYMENT PREFERENCE.—For the purposes of employing individuals pursuant to a program established under subsection (a), each State shall give preference to individuals who were formerly employed by such State, and who suffered loss of employment, within the previous year for reasons other than cause.

SEC. 140P. INTERSTATE TRANSPORTATION AGREEMENTS AND COMPACTS.

CONSENT AND APPROVAL OF CONGRESS.—The consent and approval of Congress are hereby given to the several States to negotiate, enter into, and carry out agreements or compacts for the purpose of establishing policies and priorities, including allocation of funds, to resolve interstate highway and bridge problems of regional significance identified by metropolitan planning organizations.

SEC. 140Q. SUBSTITUTE PROJECT.

(a) APPROVAL OF PROJECT.—Notwithstanding any other provision of law, upon the request of the Governor of the State of Wisconsin, submitted after consultation with appropriate local government officials, the Secretary may approve substitute highway, bus transit, and light rail transit projects, in lieu of construction of the I–94 E–W Transitway project in Milwaukee and Waukesha Counties, as identified in the 1991 Interstate Cost Estimate.

(b) ELIGIBILITY FOR FEDERAL ASSISTANCE.—Upon approval of any substitute highway or transit project or projects under subsection (a), the costs of construction of the eligible transitway project for which such project or projects are substituted shall not be eligible for funds authorized under section 108(b) of the Federal-Aid Highway Act of 1956 and a sum equal to the Federal share of such costs, as included in the latest interstate cost estimate submitted to Congress, shall be available to the Secretary to incur obligations under section 103(e)(4) of title 23, United States Code, for the Federal share of the costs of such substitute project or projects.

(c) LIMITATION ON ELIGIBILITY.—If, by October 1, 1993, or two years after the date of enactment of this Act, whichever is later, the Governor of the State of Wisconsin has not submitted a request for a substitute project or projects in lieu of the I-94 E-W Transitway, the Secretary shall not approve such substitution. If, by October 1, 1995, or four years after the date of enactment of this Act, whichever is later, such substitute project or projects are not under construction, or under contract for construction, no funds shall be appropriated under the authority of section 103(e)(4) of title 23, United States Code, for such project or projects. For the purposes of this subsection, the term "construction" has the same meaning as given to it in section 101, title 23, United States Code, and shall include activities such as preliminary engineering and right-of-way acquisition.

(d) ADMINISTRATIVE PROVISIONS.—

(1) STATUS OF SUBSTITUTE PROJECT OR PROJECTS.—Any substitute project approved under subsection (a) shall be deemed to be a substitute project for the purposes of section 103(e)(4) of title 23, United States Code (other than subparagraphs (C) and (O)).

(2) REDUCTION OF UNOBLIGATED INTERSTATE APPORTIONMENT.—Unobligated apportionments for the Interstate System in the State of Wisconsin shall, on the date of approval of any substitute project or projects under subsection (a), be applied toward the Federal share of the costs of such substitute project or projects.

(3) ADMINISTRATION THROUGH FHWA.—The Secretary shall administer this section through the Federal Highway Administration.

(4) FISCAL YEARS 1993 AND 1994 APPORTIONMENTS.—For the purpose of apportioning funds for fiscal years 1993 and 1994 under section 104(b)(5)(A), the Secretary shall consider Wisconsin as having no remaining eligible costs. For the purpose of apportioning funds under section 104(b)(5)(A) of title 23, United States Code, for fiscal year 1995 and subsequent fiscal years, Wisconsin's actual remaining eligible costs shall be used.

(5) FUNDING PROVISIONS FOR SUBSTITUTE PROJECTS.—Notwithstanding any other provision of law, the source of funding for any transit substitute projects approved under subsection (a) shall be the Mass Transit Account of the Highway Trust Fund. All other funding provisions for any approved substitute projects shall be as provided in section 103(e)(4) of title 23, United States Code.

(e) TRANSFER OF APPORTIONMENTS.—Wisconsin may transfer Interstate construction apportionments to its national highway system in amounts equal to or less than the costs for additional work on sections of the Interstate System that have been built with Interstate construction funds and that are open to traffic as shown in the 1991 Interstate cost estimate.

SEC. 140R. MONTANA-CANADA TRADE.

The Secretary shall not withhold funds from the State of Montana on the basis of actions taken by the State of Montana pursuant to a draft memorandum of understanding with the Province of Alberta, Canada, regarding truck transportation between Canada and Shelby, Montana: *Provided*, That such actions do not include actions not permitted by the State of Montana on or before June 1, 1991.

SEC. 140S. LEVEL OF EFFORT APPORTIONMENT BONUSES.

(a) AMENDMENT TO TITLE 23.—(1) Chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 159. Level of effort apportionment bonuses

"(a) The Secretary shall, for fiscal years beginning with fiscal year 1993, determine each State's total annual apportionment under sections 133 (relating to the Surface Transportation Program), 144 (relating to the Bridge Program), and 119 (relating to the Interstate Maintenance Program) and shall use that total in calculating the bonus apportionments authorized by this section.

"(b) The Secretary shall, subject to the availability of appropriations, make an apportionment to each State in which the rate of tax on gasoline, as of July 1 preceding the beginning of the fiscal year, exceeds the average rate of tax on gasoline levied by the fifty States and the District of Columbia as of such date, with a bonus apportionment equal to the lesser of—

"(1) five percent of its total annual apportionment under sections 133, 144, and 119 of this title for each of fiscal years 1993, 1994, 1995, and 1996; or

"(2) the percentage by which that State's rate of tax on gasoline exceeds the average rate of tax on gasoline levied by the fifty States and the District of Columbia, multiplied by its total annual apportionment under sections 133, 144, and 119 of this title.

"(c)(1) The Secretary shall, subject to the availability of appropriations, make a bonus apportionment to each State equal to its total annual apportionment under sections 133, 144, and 119 of this title, multiplied by the percentage by which that State's rate of tax on gasoline, as of July 1 preceding the beginning of the fiscal year, exceeds the average rate of tax on gasoline levied by the fifty States and the District of Columbia as of such date, minus an amount which is the product of that total annual apportionment and the percentage by which that State's per capita disposable income exceeds the average per capita disposable income in the fifty States and the District of Columbia, calculated for the calendar year preceding the year in which the fiscal year begins. The bonus apportionment made to any State under this section shall be reduced by any amount provided under subsection (b).

"(2) For purposes of paragraph (1), the per capita disposable income of a State or the District of Columbia for any calendar year is such income as is determined by the Bureau of Economic Analysis of the Department of Commerce.

"(d) If the aggregate apportionments under this section in any fiscal year exceed the authorization of appropriations for such year, there shall be a pro rata reduction for that fiscal year of the apportionments to the extent of such excess.

"(e) The Federal share payable of the costs of projects carried out with apportioned funds under this section may not exceed 80 percent.

"(f) For purposes of this section, the term 'tax on gasoline' means a tax that is—

"(1) imposed by and administered by a State; and

"(2) uniform as to rate and based upon identical transactions in all geographical areas of such State.

"(g) Funds authorized to be appropriated for bonus apportionment under this section shall be available only for projects authorized under chapter 1 of this title, including provisions which provide contract authority.".

(2) The table of sections for chapter 1 of title 23, United States Code, is amended by adding after the item relating to section 158 the following new item:

"159. Level of effort apportionment bonuses.".

(b) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for payment of the bonus apportionments authorized by section 159 of title 23, United States Code, the following amounts for the following fiscal years:

(A) For fiscal year 1993, $390,500,000.

(B) For fiscal year 1994, $943,000,000.

(C) For fiscal year 1995, $1,138,500,000.

(D) For fiscal year 1996, $1,638,500,000.

(2) Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(c) ADDITIONAL DONOR STATE BONUS AMOUNTS.—(1) There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for the payment of additional donor State bonus amounts the following amounts for the following fiscal years:

(A) For fiscal year 1993, $390,500,000.

(B) For fiscal year 1994, $943,000,000.

(C) For fiscal year 1995, $1,138,500,000.

(D) For fiscal year 1996, $1,638,500,000.

(2) Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(3)(A) The additional amount provided under this subsection for a fiscal year shall be apportioned only after bonus apportionments under section 159 of title 23, United States Code, to the extent of their availability, have first been made to the States.

(B) The bonus apportionments which are provided under this subsection for a fiscal year shall be apportioned in such a way as to bring each successive State, or States, with the lowest dollar return on dollar projected to be contributed into the Highway Trust Fund for such fiscal year, up to the highest common return on contributed dollar that can be funded with the annual authorizations provided under this subsection.

(C) The additional apportionment under this subsection shall be subject to the provisions of chapter 1 of title 23, United States Code, including provisions which provide contract authority.

(d) OBLIGATION LIMITATIONS.—(1)(A) Notwithstanding section 104 of this Act, for each of the fiscal years 1993, 1994, 1995 and 1996, the Secretary shall distribute among the States the limitations imposed by section 104(a) of this Act by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways (other than sums authorized for section 159 of title 23, United States Code and sums authorized by subsection (c) of this section) which are apportioned or allocated to each State for such fiscal year bear to the total of such sums authorized to be appropriated for Federal-aid highways which are apportioned or allocated to all the States for such fiscal year until 100 percent has been distributed.

(B) The Secretary shall distribute the limitation remaining after the distribution in subparagraph (A) among the States entitled to apportionments of sums authorized by section 159 of title 23, United States Code, and sums authorized by subsection (c) of this section, in the ratio which such apportionments and allocations for each such State bear to the total of such apportionments and allocations for all such States.

(2) Whenever the limitation made available for a fiscal year is insufficient to provide 100 percent of the distribution under paragraph (1)(B), then—

(A) 50 percent of such insufficient limitation shall be deducted from the limitation that would be received for section 159 of title 23, United States Code, and

(B) 50 percent of such insufficient limitation shall be deducted from the limitation that would be received under subsection (c) of this section.

(e) INAPPLICABILITY OF OBLIGATION LIMITATION TO EMERGENCY RELIEF.—Limitations in section 104 of this Act shall not apply to obligations for emergency relief pursuant to section 125 of title 23, United States Code.

(f) DEFINITION.—For purposes of this section, the term "State" has the meaning given to such term in section 101 of title 23, United States Code.

SEC. 140T. NATIONAL POLICY FOR INFRASTRUCTURE REUSE.

(a) STUDY AND REPORT.—(1) Section 307 of title 23, United States Code, is amended by adding at the end the following new subsection:

"(g)(1) Not later than 12 months after the date of the enactment of the Surface Transportation Efficiency Act of 1991, the Secretary shall conduct a study of methods of facilitating the reuse of industrial manufacturing facilities.

"(2) In conducting the study described in paragraph (1), the Secretary shall consult with the heads of such departments and agencies of the Federal Government as the Secretary determines to be appropriate to ascertain regulatory, technical and other problems or constraints associated with the reuse of industrial manufacturing facilities.

"(3) Upon completion of the study described in paragraph (1), the Secretary shall submit a report to the appropriate committees of Congress on the findings of the study, including a summary of any information submitted to the Secretary by the head of a department or agency pursuant to paragraph (2).

"(4) For fiscal year 1992, an amount not to exceed $200,000 shall be taken out of the administration and research funds authorized by section 104 of this title for the purpose of carrying out the provisions of this subsection.".

(2) Section 104 of title 23, United States Code, is amended by striking "authorized by subsections (a) and (b) of section 307" and inserting "authorized by subsections (a), (b), and (g) of section 307".

SEC. 140U. DECLARATION OF NONNAVIGABILITY OF PORTION OF HUDSON RIVER, NEW YORK.

(a) DECLARATION OF NONNAVIGABILITY.—

(1) IN GENERAL.—Subjection to subsections (b), (c) and (d), the area described in paragraph (2) is declared to be nonnavigable waters of the United States.

(2) AREA DESCRIBED.—The area referred to in paragraph (1) is the portion of the Hudson River, New York, described as follows (according to coordinates and bearings in the system used on the Borough Survey, Borough President's Office, New York, New York).

Beginning at a point in the United States Bulkhead Line approved by the Secretary of War, July 31, 1941, having a coordinate of north 1918,003 west 9806,753:

(1) Running thence easterly, on the arc of a circle curving to the left, whose radial line bears north 3°-44'-20" east, having a radius of 390.00 feet and a central angle of 22°-05'-50", 150.41 feet to a point of tangency;

(2) Thence north 71°-38'-30" east, 42.70 feet;

(3) Thence south 11°-05'-40" east, 33.45 feet;

(4) Thence south 78°-54'-20" west, 0.50 feet;

(5) Thence south 11°-05'-40" east, 2.50 feet;

(6) Thence north 78°-54'-20" east, 0.50 feet;

(7) Thence south 11°-05'-40" east, 42.40 feet to a point of curvature;

(8) Thence southerly, on the arc of a circle curving to the right, having a radius of 220.00 feet and a central angle of 18°-37'-40", 83.85 feet to a point of compound curvature;

(9) Thence still southerly, on the arc of a circle curving to the right, having a radius of 150.00 feet and a central angle of 38°-39'-00", 101.19 feet to another point of compound curvature;

(10) Thence westerly, on the arc of a circle curving to the right, having a radius of 172.05 feet and a central angle of 32°-32'-03", 97.89 feet to a point of curve intersection;

(11) Thence south 13°-16'-57" east, 50.86 feet to a point of curve intersection;

(12) Thence westerly, on the arc of a circle curving to the left, whose radial bears north 13°-16'-57" west, having a radius of 6.00 feet and a central angle of 180°-32'-31", 18.91 feet to a point of curve intersection;

(13) Thence southerly, on the arc of a circle curving to the left, whose radial line bears north 75°-37'-11" east, having a radius of 313.40 feet and a central angle of 4°-55'-26", 26.93 feet to a point of curve intersection;

(14) Thence south 70°-41'-48" west, 36.60 feet;

(15) Thence north 13°-45'-00" west, 42.87 feet;

(16) Thence south 76°-15'-00" west, 15.00 feet;

(17) Thence south 13°-45'-00" east, 44.33 feet;

(18) Thence south 70°-41'-45" west, 128.09 feet to a point in the United States Pierhead Line approved by the Secretary of War, 1936;

(19) Thence north 63°-08'-48" west, along the United States Pierhead Line approved by the Secretary of War, 1936, 114.45 feet to an angle point therein;

(20) Thence north 81°-08'-00" west, still along the United States Pierhead Line approved by the Secretary of War, 1936, 202.53 feet;

The following three courses being along the lines of George Sollan Park as shown on map prepared by the city of New York, adopted by the Board of Estimate, November 13, 1981, Acc. N° 30071 and lines of property leased to Battery Park City Authority and B. P. C. Development Corp.

(21) Thence north 77°-35'-20" east, 231.35 feet;

(22) Thence north 12°-24'-40" west, 33.82 feet;

(23) Thence north 54°-49'-00" east, 171.52 feet to a point in the United States Bulkhead Line approved by the Secretary of War, July 31, 1941;

(24) Thence north 12°-24'-40" west, along the United States Bulkhead Line approved by the Secretary of War, July 31, 1941, 62.28 feet to the point or place of beginning.

(b) DETERMINATION OF PUBLIC INTEREST.—The declaration made in subsection (a)(1) shall not take effect if the Secretary of the Army (acting through the Chief of Engineers), using reasonable descretion, finds—

(1) before the date which is 120 days after the date of the submission to the Secretary of appropriate plans for the proposed project, and

(2) after consultation with local and regional public officials (including local and regional public planning organizations), that the proposed project is not in the public interest.

(c) LIMITATION ON APPLICABILITY OF DECLARATION.—

(1) AFFECTED AREA.—The declaration made in subsection (a)(1) shall apply only to those portions of the area described in subsection (a)(2) which are or will be occupied by permanent structures (including docking facilities) comprising the proposed project.

(2) APPLICATION OF OTHER LAWS.—Notwithstanding subsection (a)(1), all activities conducted in the area described in subsection (a)(2) are subject to all Federal statutes and regulations which may otherwise be applicable to such activities, including as may be applicable—

(A) sections 9 and 10 of the Act of March 3, 1899 (33 U.S.C. 401, 403), commonly known as the River and Harbors Appropriation Act of 1899,

(B) section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1254), and

(C) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) EXPIRATION DATE.—The declaration made in subsection (a)(1) shall expire—

(1) on the date which is 6 years after the date of enactment of this Act if work on the proposed project to be performed in the area described in subsection (a)(2) is not commenced before that date, and

(2) on the date which is 20 years after the date of the enactment of this Act, for any portion of the area described in subsection (a)(2) which on that date is not bulkheaded, filled, or occupied by a permanent structure (including docking facilities).

(e) PROPOSED PROJECT DEFINED.—For purposes of this section, the term "proposed project" means any project for the rehabilitation and development of—

(1) the structure located in the area described in subsection (a)(2) and commonly referred to as Pier A; and

(2) the area surrounding that structure.

SEC. 140V. SENSE OF THE SENATE.

It is the sense of the Senate that the conferees on this Act should consider section 159 of title 23, United States Code as it appears in amendment No. 295 as amended so as to determine each State's total apportionments under section 159 of title 23, United States Code, in a way that reflects each State's total effort for highways as described in amendment No. 334, and including each State's ability to finance its total effort for highways, as measured by its per capita disposable income as compared to the average State per capita disposable income, as well as taking into account the effect of such apportionment formula on energy conservation, energy security, and environmental quality.

PART B—NATIONAL RECREATIONAL TRAILS FUND ACT

SEC. 141. SHORT TITLE.

This part may be cited as the "National Recreational Trails Fund Act of 1991".

SEC. 142. CREATION OF NATIONAL RECREATIONAL TRAILS TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end thereof the following new section:

"SEC. 9511. NATIONAL RECREATIONAL TRAILS TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'National Recreational Trails Trust Fund', consisting of such amounts as may be appropriated, credited, or paid to it as provided in this section, section 9503(c)(6), or section 9602(b).

"(b) EXPENDITURES FROM TRUST FUND.—Amounts in the National Recreational Trails Trust Fund shall be available for making expenditures to carry out the purposes of the National Recreational Trails Fund Act of 1991.".

(b) DEPOSIT OF UNREFUNDED HIGHWAY TRUST FUND MONEYS.—Section 9503(c) of the Internal Revenue Code of 1986 (relating to Highway Trust Fund) is amended by adding at the end thereof the following new paragraph:

"(6) TRANSFERS FROM THE TRUST FUND FOR NONHIGHWAY RECREATIONAL FUEL TAXES.—

"(A) TRANSFER TO NATIONAL RECREATIONAL TRAILS TRUST FUND.—The Secretary shall annually pay from the Highway Trust Fund into the National Recreational Trails Trust Fund amounts (as determined by the Secretary) equivalent to 0.3 per centum of total Highway Trust Fund receipts, as adjusted by the Secretary pursuant to subparagraph (B).

"(B) ADJUSTMENT OF PERCENTAGE.—

"(i) FIRST YEAR.—Within 1 year after the date of enactment of this Act, the Secretary shall, based on studies of nonhighway recreational fuel usage in the various States, adjust the percentage of receipts paid into the National Recreational Trails Trust Fund to correspond to the revenue received from nonhighway recreational fuel taxes.

"(ii) SUBSEQUENT YEARS.—Not more frequently than once every 3 years, the Secretary may increase or decrease the percentage established under clause (i) to reflect, in the Secretary's estimation, changes in the amount of revenues received from nonhighway recreational fuel taxes.

"(iii) AMOUNT OF ADJUSTMENT.—The amount of an adjustment in the percentage stated in clause (ii) shall be not more than 10 per centum of that percentage in effect at the time the adjustment is made.

"(iv) USE OF DATA.—The Secretary shall make use of data on off-highway recreational vehicle registrations and use in making adjustments under clauses (i) and (ii).

"(C) DEFINITIONS.—For the purposes of this paragraph—

"(i) NONHIGHWAY RECREATIONAL FUEL TAXES.—The term 'nonhighway recreational fuel taxes' means the taxes under sections 4041, 4081, and 4091 (to the extent attributable to the Highway Trust Fund financing rate) with respect to fuel used as nonhighway recreational fuel.

"(ii) NONHIGHWAY RECREATIONAL FUEL.—The term 'nonhighway recreational fuel' means—

"(I) fuel used in vehicles and equipment on recreational trails or back country terrain, including use in vehicles registered for highway use when used on recreational trails, trail access roads not eligible for funding under title 23, United States Code, or back country terrain; and

"(II) fuel used in campstoves and other outdoor recreational equipment.".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new item:

"Sec. 9511. National Recreational Trails Trust Fund.".

SEC. 143. NATIONAL RECREATIONAL TRAILS FUNDING PROGRAM.

(a) IN GENERAL.—The Secretary, using amounts available in the Fund, shall administer a program allocating moneys to the States for the purposes of providing and maintaining recreational trails.

(b) STATEMENT OF INTENT.—Moneys made available under this Act are to be used on trails and trail-related projects which have been planned and developed under the otherwise existing laws, policies and administrative procedures within each State, and which are identified in, or which further a specific goal of, a trail plan included or referenced in a Statewide Comprehensive Outdoor Recreation Plan required by the Land and Water Conservation Fund Act.

(c) STATE ELIGIBILITY.—

(1) TRANSITIONAL PROVISION.—Until the date that is three years after the date of enactment of this Act, a State shall be eligible to receive moneys under this Act only if such State's application proposes to use the moneys as provided in subsection (e).

(2) PERMANENT PROVISION.—On and after the date that is three years after the date of enactment of this Act, a State shall be eligible to receive moneys under this Act only if—

(A) a recreational trail advisory board on which both motorized and nonmotorized recreational trail users are represented exists within the State;

(B) in the case of a State that imposes a tax on nonhighway recreational fuel, the State by law reserves a reasonable estimation of the revenues from that tax for use in providing and maintaining recreational trails;

(C) the Governor of the State has designated the State official or officials who will be responsible for administering moneys received under this Act; and

(D) the State's application proposes to use moneys received under this Act as provided in subsection (e).

(d) ALLOCATION OF MONEYS IN THE FUND.—

(1) ADMINISTRATIVE COSTS.—No more than 3 per centum of the expenditures made annually from the Fund may be used to pay the cost to the Secretary for—

(A) approving applications of States for moneys under this Act;

(B) paying expenses of the National Recreational Trails Advisory Committee;

(C) conducting national surveys of nonhighway recreational fuel consumption by State, for use in making determinations and estimations pursuant to this Act; and, if any such funds remain unexpended, for—

(D) research on methods to accommodate multiple trail uses and increase the compatibility of those uses, information dissemination, technical assistance, and preparation of a national trail plan as required by the National Trails System Act (16 U.S.C. 1241 et al).

(2) ALLOCATION TO STATES.—

(A) AMOUNT.—Amounts in the Fund remaining after payment of the administrative costs described in paragraph (1), shall be allocated and paid to the States annually in the following proportions:

(i) EQUAL AMOUNTS.—50 per centum of such amounts shall be allocated equally among eligible States.

(ii) AMOUNTS PROPORTIONATE TO NONHIGHWAY RECREATIONAL FUEL USE.—50 per centum of such amounts shall be allocated among eligible States in proportion to the amount of nonhighway recreational fuel use during the preceding year in each such State, respectively.

(B) USE OF DATA.—In determining amounts of nonhighway recreational fuel use for the purpose of subparagraph (A)(ii), the Secretary may consider data on off-highway vehicle registrations in each State.

(3) LIMITATION ON OBLIGATIONS.—The provisions of paragraphs (1) and (2) notwithstanding, the total of all obligations for recreational trails under this section shall not exceed—

(A) $30,000,000 for fiscal year 1992;
(B) $50,000,000 for fiscal year 1993;
(C) $54,000,000 for fiscal year 1994;
(D) $56,000,000 for fiscal year 1995;
(E) $56,000,000 for fiscal year 1996;

(e) USE OF ALLOCATED MONEYS.—

(1) PERMISSIBLE USES.—A State may use moneys received under this Act for—

(A) in an amount not exceeding 7 per centum of the amount of moneys received by the State, administrative costs of the State;

(B) in an amount not exceeding 5 per centum of the amount of moneys received by the State, operation of environmental protection and safety education programs relating to the use of recreational trails;

(C) development of urban trail linkages near homes and workplaces;

(D) maintenance of existing recreational trails, including the grooming and maintenance of trails across snow;

(E) restoration of areas damaged by usage of recreational trails and back country terrain;

(F) development of trail-side and trail-head facilities that meet goals identified by the National Recreational Trails Advisory Committee;

(G) provision of features which facilitate the access and use of trails by persons with disabilities;

(H) acquisition of easements for trails, or for trail corridors identified in a State trail plan;

(I) acquisition of fee simple title to property from a willing seller, when the objective of the acquisition cannot be accomplished by acquisition of an easement or by other means;

(J) construction of new trails on State, county, municipal, or private lands, where a recreational need for such construction is shown; and

(K) only as otherwise permissable, and where necessary and required by a State Comprehensive Outdoor Recreation plan, construction of new trails crossing Federal lands, where such construction is approved by the administering agency of the State, and the Federal agency or agencies charged with management of all impacted lands, such approval to be contingent upon compliance by the Federal agency with all applicable laws, including the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1600 et seq.), and the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.).

(2) USE NOT PERMITTED.—A State may not use moneys received under this Act for—

(A) condemnation of any kind of interest in property; or

(B)(i) construction of any recreational trail on National Forest System lands for motorized uses unless such lands:

(I) have been allocated for uses other than wilderness by an approved Forest land and resource management plan or have been released to uses other than wilderness by an Act of Congress, and

(II) such construction is otherwise consistent with the management direction in such approved land and resource management plan;

(ii) construction of any recreational trail on Bureau of Land Management lands for motorized uses unless such lands:

(I) have been allocated for uses other than wilderness by an approved Bureau of Land Management resource management plan or have been released to uses other than wilderness by an Act of Congress, and

(II) such construction is otherwise consistent with the management direction in such approved management plans; and

(C) upgrading, expanding or otherwise facilitating motorized use or access to trails predominantly used by non-motorized trail users and on which, as of May 1, 1991, motorized use is either prohibited or has not occurred.

(3) GRANTS.—

(A) IN GENERAL.—A State may provide moneys received under this Act as grants to private individuals, organizations, city and county governments, and other government

entities as approved by the State after considering guidance from the recreational trail advisory board satisfying the requirements of section 143(c)(2)(A), for uses consistent with this section.

(B) COMPLIANCE.—A State that issues such grants under subparagraph (A) shall establish measures to verify that recipients comply with the specified conditions for the use of grant moneys.

(4) ASSURED ACCESS TO FUNDS.—Except as provided under paragraphs (6) and (8)(B), not less than 30 per centum of the moneys received annually by a State under this Act shall be reserved for uses relating to motorized recreation, and not less than 30 per centum of those moneys shall be reserved for uses relating to non-motorized recreation.

(5) DIVERSIFIED TRAIL USE.—

(A) REQUIREMENT.—To the extent practicable and consistent with other requirements of this section, a State shall expend moneys received under this Act in a manner that gives preference to project proposals which—

(i) provide for the greatest number of compatible recreational purposes including, but not limited to, those described under the definition of "recreational trail" in subsection (g)(5); or

(ii) provide for innovative recreational trail corridor sharing to accommodate motorized and non-motorized recreational trail use.

This paragraph shall remain effective until such time as a State has allocated not less than 40 per centum of moneys received under this Act in the aforementioned manner.

(B) COMPLIANCE.—The State shall receive guidance for determining compliance with subparagraph (A) from the recreational trail advisory board satisfying the requirements of section 143(c)(2)(A).

(6) SMALL STATE EXCLUSION.—Any State with a total land area of less than three million five hundred thousand acres, and in which nonhighway recreational fuel use accounts for less than 1 per centum of all such fuel use in the United States, shall be exempted from the requirements of paragraph (4) of this subsection upon application to the Secretary by the State demonstrating that it meets the conditions of this paragraph.

(7) CONTINUING RECREATIONAL USE.—At the option of each State, moneys made available pursuant to this Act may be treated as Land and Water Conservation Fund moneys for the purposes of section 6(f)(3) of the Land and Water Conservation Fund Act.

(8) RETURN OF MONEYS NOT EXPENDED.—(A) Except as provided in subparagraph (B), moneys paid to a State that are not expended or dedicated to a specific project within four years after receipt for the purposes stated in this subsection shall be returned to the Fund and shall thereafter be reallocated under the formula stated in subsection (d).

(B) If approved by the State recreational trail advisory board satisfying the requirements of section 143(c)(2)(A), may be exempted from the requirements of paragraph (4) and expended or committed to projects for purposes otherwise stated in this subsection for a period not to extend beyond 4 years after receipt, after which any remaining moneys not expended or dedicated shall be returned to the Fund and shall thereafter be reallocated under the formula stated in subsection (d).

(f) COORDINATION OF ACTIVITIES.—

(1) COOPERATION BY FEDERAL AGENCIES.—Each agency of the United States Government that manages land on which a State proposes to construct or maintain a recreation trail pursuant to this Act is encouraged to cooperate with the State and the Secretary in planning and carrying out the activities described in subsection (e). Nothing in this Act diminishes or in any way alters the land management responsibilities, plans and policies established by such agencies pursuant to other applicable laws.

(2) COOPERATION BY PRIVATE PERSONS.—

(A) WRITTEN ASSURANCES.—As a condition to making available moneys for work on recreational trails that would affect privately owned land, a State shall obtain written assurances that the owner of the property will cooperate with the State and participate as necessary in the activities to be conducted.

(B) PUBLIC ACCESS.—Any use of a State's allocated moneys on private lands must be accompanied by an easement or other legally binding agreement that ensures public access to the recreational trail improvements funded by those moneys.

(g) DEFINITIONS.—For the purposes of this section—

(1) ELIGIBLE STATE.—The term "eligible State" means a State that meets the requirements stated in subsection (c).

(2) FUND.—The term "Fund" means the National Recreational Trails Trust Fund established by section 9511 of the Internal Revenue Code of 1986.

(3) NONHIGHWAY RECREATIONAL FUEL.—The term "nonhighway recreational fuel" has the meaning stated in section 9503(c)(6)(C)(ii) of the Internal Revenue Code of 1986.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(5) RECREATIONAL TRAIL.—The term "recreational trail" means a thoroughfare or track across land or snow, used for recreational purposes such as bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, aquatic or water activity and vehicular travel by motorcycle, four-wheel drive or all-terrain off-road vehicles, without regard to whether it is a "National Recreation Trail" designated under section 4 of the National Trails System Act (16 U.S.C. 1243).

(6) MOTORIZED RECREATION.—The term "motorized recreation" may not include motorized conveyances used by persons with disabilities, such as self-propelled wheelchairs, at the discretion of each State.

SEC. 144. NATIONAL RECREATIONAL TRAILS ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established the National Recreational Trails Advisory Committee.

(b) MEMBERS.—There shall be eleven members of the advisory committee, consisting of—

(1) Eight members appointed by the Secretary from nominations submitted by recreational trail user organizations, one each representing the following recreational trail uses:

(A) Hiking,
(B) Cross country skiing,
(C) Off-highway motorcycling,
(D) Snowmobiling,
(E) Horseback riding,
(F) All terrain vehicle riding,
(G) Bicycling,
(H) Four-wheel driving;

(2) an appropriate official of government with a background in science or natural resources management, including any official of State or local government, designated by the Secretary;

(3) one member appointed by the Secretary from nominations submitted by water trail user organizations; and

(4) one member appointed by the Secretary from nominations submitted by hunting and fishing enthusiast organizations.

(c) CHAIRMAN.—The Chair of the advisory committee shall be the government official referenced in subsection (b)(2), who shall serve as a non-voting member.

(d) SUPPORT FOR COMMITTEE ACTION.—Any action, recommendation, or policy of the advisory committee must be supported by at least five of the members appointed under subsection (b)(1).

(e) TERMS.—Members of the advisory committee appointed by the Secretary shall be appointed for terms of three years, except that the members filling five of the eleven positions shall be initially appointed for terms of two years, with subsequent appointments to those positions extending for terms of three years.

(f) DUTIES.—The advisory committee shall meet at least twice annually to—

(1) review utilization of allocated moneys by States;

(2) establish and review criteria for trailside and trail-head facilities that qualify for funding under this Act; and

(3) make recommendations to the Secretary for changes in Federal policy to advance the purposes of this Act.

(g) ANNUAL REPORT.—The advisory committee shall present to the Secretary an annual report on its activities.

(h) REIMBURSEMENT FOR EXPENSES.—Non-governmental members of the advisory committee shall serve without pay, but, to the extent funds are available pursuant to section 143(d)(1)(B), shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties.

(i) REPORT TO CONGRESS.—Not later than four years after the date of enactment of this Act, the Secretary shall prepare and submit to the Committee on Environment and Public Works of the Senate, and the Committee on Public Works and Transportation of the House of Representatives, a study which summarizes the annual reports of the National Recreational Trails Advisory Committee, describes the allocation and utilization of moneys under this Act, and contains recommendations for changes in Federal policy to advance the purposes of this Act.

PART C—INTELLIGENT VEHICLE-HIGHWAY SYSTEMS ACT

SEC. 151. SHORT TITLE.

This Part may be cited as the "Intelligent Vehicle-Highway Systems Act of 1991".

SEC. 152. PURPOSE AND SCOPE.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Transportation (hereinafter referred to in this title as the "Secretary") shall conduct a program to promote and facilitate the implementation of Intelligent Vehicle-Highway Systems as a component of the Nation's surface transportation systems. The goals of such program shall include, but not be limited to—

(1) the widespread implementation of Intelligent Vehicle-Highway Systems to enhance the capacity, efficiency, and safety of the Federal-aid highway system, including as an alternative to additional physical capacity of that system;

(2) the enhancement, through more efficient use of the Federal-aid highway system, of the efforts of the several States to attain air quality goals, as established by the Administrator of the Environmental Protection Agency pursuant to the Clean Air Act (42

U.S.C. 7401 et seq.), as amended by Public Law 101-549 (104 t. 2399);

(3) the enhancement of safe and efficient operation of the Nation's highway systems;

(4) the development and promotion of Intelligent Vehicle-Highway Systems and an Intelligent Vehicle-Highway Systems industry in the United States, utilizing authority provided under section 307 of title 23, United States Code;

(5) the reduction of societal, economic, and environmental costs associated with traffic congestion;

(6) the enhancement of United States industrial and economic competitiveness and productivity, by improving the free flow of people and commerce, and by establishing a significant United States presence in an emerging field of technology;

(7) the development of a technology base for Intelligent Vehicle-Highway Systems and the establishment of the capability to perform demonstration experiments, utilizing existing national laboratory capabilities where appropriate; and

(8) the facilitation of the transfer of transportation technology from national laboratories to the private sector.

(b) COORDINATION.—The Secretary shall lead and coordinate an Intelligent Vehicle-Highway Systems program and shall foster its use as a key component of the Nation's surface transportation systems. As appropriate, the Secretary shall consult with the Secretary of Commerce, the Administrator of the Environmental Protection Agency, the Director of the National Science Foundation, and the heads of other interested Federal departments and agencies, in carrying out the purposes of this title. The Secretary shall strive to transfer federally owned or patented technology to State and local governments and to the United States private sector. As appropriate, the Secretary shall maximize the involvement of the United States private sector, colleges and universities, and State and local governments in aspects of such programs, including design, conduct (including operations and maintenance), evaluation, and financial or in-kind participation.

(c) STANDARDS.—The Secretary shall develop and implement standards and protocols to promote the widespread use and evaluation of Intelligent Vehicle-Highway Systems technology as a component of the Nation's surface transportation systems. To the extent practicable, such standards and protocols shall promote compatibility among Intelligent Vehicle-Highway Systems technologies implemented throughout the several States. The Secretary is authorized to make use of existing standards-setting organizations as the Secretary determines appropriate.

(d) EVALUATION.—The Secretary shall establish guidelines and requirements for the evaluation of field and related operational tests carried out pursuant to section 155 of this Act.

(e) INFORMATION CLEARINGHOUSE.—The Secretary shall establish a repository for technical and safety data collected as a result of federally sponsored projects pursuant to this title, and shall make such information readily available, upon request, at an appropriate cost to all users, except for proprietary information and data. In carrying out the requirements of this subsection, the Secretary may delegate this responsibility, with continuing oversight by the Secretary, to an appropriate entity not within the Department of Transportation. For the purposes of carrying out the requirements of this subsection, such entity would be eligible for Federal aid, as specified in this title.

SEC. 153. ADVISORY COMMITTEE.

The Secretary is authorized to utilize one or more advisory committees in carrying out his responsibilities under this title. Any advisory committee so utilized shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.), and funding provided for any such committee shall be available from monies appropriated for advisory committees as specified in relevant appropriations Acts, and from funds allocated for research, development, and implementation activities in connection with the Intelligent Vehicle-Highway Systems program under this title.

SEC. 154. STRATEGIC PLAN, IMPLEMENTATION, AND REPORT TO CONGRESS.

(a) STRATEGIC PLAN.—

(1) STRATEGIC PLAN.—Not later than twelve months following the date of the enactment into law of this title, the Secretary shall formulate, and submit to Congress, a strategic plan for the Intelligent Vehicle-Highway Systems program under this title.

(2) SCOPE OF STRATEGIC PLAN.—In preparing such plan, the Secretary shall—

(A) specify the goals, objectives, milestones of such program and how specific projects relate to these, including consideration of the five-, ten-, and twenty-year timeframes for specified goals and objectives;

(B) detail the status and challenges and non-technical constraints facing the program;

(C) chart a course of action necessary to achieve the program's goals and objectives;

(D) provide for the development of standards and protocols to promote and ensure compatibility in the implementation of Intelligent Vehicle-Highway Systems technologies; and

(E) provide for the accelerated use of advanced technology to reduce traffic congestion along heavily populated and traveled corridors.

(b) IMPLEMENTATION REPORTS.—

(1) IMPLEMENTATION REPORTS.—Not later than twenty-four months after the date of enactment of this title, and annually thereafter, the Secretary shall submit to the Congress a report on the implementation of the strategic plan required in subsection (a) of this section.

(2) SCOPE OF IMPLEMENTATION REPORTS.—In preparing such report, the Secretary shall—

(A) analyze the possible and actual accomplishments of Intelligent Vehicle-Highway Systems projects in achieving congestion, safety, environmental, and energy conservation goals, as described in this title;

(B) specify cost-sharing arrangements made, including the scope and nature of Federal investment, in any research, development, or implementation project under such program;

(C) assess non-technical problems and constraints identified as a result of each such implementation project; and

(D) include, if appropriate, any recommendations for legislation or modification to the strategic plan required in subsection (a) of this section.

(c) REPORT TO CONGRESS.—

(1) REPORT TO CONGRESS.—In cooperation with the Attorney General and the Secretary of Commerce, the Secretary shall prepare and submit, within twenty-four months following the date of enactment of this title, a report to Congress addressing the non-technical constraints and barriers to all aspects of the innovation of such program under this title.

(2) SCOPE OF REPORT TO CONGRESS.—In preparing such report, the Secretary shall—

(A) address antitrust, privacy, educational and staffing needs, patent, liability, standards and other constraints, barriers, or concerns relating to such program;

(B) recommend legislation and other administrative action necessary to further the Intelligent Vehicle-Highway Systems program under this title; and

(C) address ways to further promote industry and State and local government involvement in such program.

(3) UPDATE OF REPORT.—Within five years following such date of enactment, the Secretary shall prepare an update of such report.

SEC. 155. TECHNICAL, PLANNING, AND PROJECT ASSISTANCE.

(a) TECHNICAL ASSISTANCE AND INFORMATION.—The Secretary is authorized to provide planning and technical assistance and information to State and local governments seeking to use and evaluate Intelligent Vehicle-Highway Systems technologies. In doing so, the Secretary shall assist State and local officials in developing provisions for implementing areawide traffic management control centers, necessary laws to advance such systems, the infrastructure for such existing and evolving systems, and other necessary activities to carry out the Intelligent Vehicle-Highway Systems program under this title.

(b) PLANNING GRANTS.—Subject to the availability of funds, the Secretary is authorized to make grants for feasibility and planning studies to be conducted by State and local governments. Such grants shall be made at such time, in such amounts, and subject to such conditions as the Secretary may determine.

(c) TRAFFIC MANAGEMENT SYSTEMS.—Any interagency traffic and incident management entity, including independent public authorities or agencies, contracted to a State department of transportation for the implementation of traffic management systems of designated corridors, is eligible to receive Federal transportation funds under this title through the appropriate State department of transportation.

(d) FUNDING OF PROJECTS.—In deciding which projects or operational tests relating to Intelligent Vehicle-Highway Systems to fund utilizing authority provided under section 307 of title 23, United States Code, the Secretary shall—

(1) give the highest priority to those projects that would contribute to the national goals and objectives specified in the Intelligent Vehicle-Highway Systems strategic plan required pursuant to section 154 of this title, minimize the relative percentage of Federal contributions to total project costs, but not including Federal-aid funds;

(2) seek to fund operational tests that advance the current State of knowledge and, where appropriate, build on successes achieved in previously funded work involving such programs; and

(3) require that operational tests utilizing Federal funds pursuant to this Act have a written evalution of the IVHS technologies investigated and key outcomes of the investigation, consistent with the guidelines developed pursuant to section 152(d) of this Act.

(e) AUTHORITY TO USE FUNDS.—Each State and eligible local entity is authorized to use funds provided under this Act for implementation purposes in connection with the Intelligent Vehicle-Highway Systems Program.

SEC. 156. APPLICATIONS OF TECHNOLOGY.

(a) CONGESTED CORRIDORS PROGRAM.—The Secretary shall designate transportation corridors in which application of Intelligent Vehicle-Highway Systems will have particular benefit and, through financial and technical assistance, shall assist in the implementation of such systems. In designating such corridors, the Secretary shall focus on automatic vehicle identification, electronic toll collection, highway advisory radio, variable message signage, advanced traveler information systems, and other steps that would reduce congestion, enhance safety, and promote a smoother flow of traffic throughout the corridors.

(b) PRIORITIES.—In designating and providing funding for such corridors, the Secretary shall allocate not less than 50 per centum of the funds appropriated pursuant to this section to eligible State or local entities for application in not less than three but not more than ten corridors with the following characteristics:

(1) traffic density (as a measurement of vehicle miles traveled per road mile) at least 1.5 times the national average;

(2) severe or extreme nonattainment for ozone, as determined by the Administrator of the Environmental Protection Agency pursuant to the Clean Air Act, as amended by Public Law 101-549 (104 t. 2399);

(3) a variety of types of transportation facilities, such as highways, bridges, tunnels, toll and non-toll;

(4) inability to significantly expand existing surface transportation facilities;

(5) a significant mix of passenger, public transportation, and commercial motor carrier traffic;

(6) complexity of traffic patterns; and

(7) potential contribution to the implementation of the Secretary's strategic plan developed pursuant to section 154 of this title.

(c) ADDITIONAL FUNDING.—The balance of funds provided under this section shall be allocated to eligible State or local entities for application in corridors with a significant number of the characteristics listed in subsection (a) of this section.

SEC. 157. AUTHORIZATIONS.

(a) CONGESTED CORRIDORS PROGRAM.—For the congested corridors program under section 156, within funds authorized to be deducted pursuant to section 104(a) of title 23, United States Code, there is authorized to be appropriated $150,000,000 for each of fiscal years 1992, 1993, 1994, 1995, and 1996.

(b) AVAILABILITY OF FUNDS.—Funds authorized to be appropriated under this Act shall remain available until expended.

(c) RESERVATION OF FUNDS.—Of the funds provided pursuant to subsection (a) of this section, not less than 5 per centum shall be reserved for innovative, high-risk operational or analytical tests that do not attract substantial non-Federal commitments but are determined by the Secretary as having significant potential to help accomplish long-term goals established by the strategic plan prepared pursuant to section 154 of this Act.

(d) FEDERAL SHARE PAYABLE.—The Federal share payable on account of activities authorized pursuant to this title shall not exceed 80 per centum of the cost. The Secretary may waive this restriction for projects undertaken pursuant to subsection (c) of this section.

SEC. 158. DEFINITIONS.

For the purposes of this part, the term—

(a) "Intelligent Vehicle-Highway Systems" means the development or application of electronics, communications, or information processing, including, but not limited to, advanced traffic management systems, advanced traveler information systems, and advanced vehicle communications systems, used singly or in combination to improve the efficiency and safety of surface transportation systems; and

(b) "corridor" means any major transportation route which includes some contribution of closely parallel limited access highways, major arterials, or transit lines; and, with regard to traffic incident management, it may also refer to more distant transportation routes that can serve as viable options to each other in the event of traffic incidents.

PART D—RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

SEC. 161. RELOCATION ASSISTANCE REGULATIONS RELATING TO THE RURAL ELECTRIFICATION ADMINISTRATION.

Section 213(c) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4633) is amended by inserting "and the Rural Electrification Administration" after "Tennessee Valley Authority".

TITLE II—HIGHWAY SAFETY

PART A—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION AUTHORIZATION

SEC. 201. SHORT TITLE.

This part may be cited as the "National Highway Traffic Safety Administration Authorization Act of 1991".

SEC. 202. DEFINITIONS.

As used in this part, the term—

(1) "bus" means a motor vehicle with motive power, except a trailer, designed for carrying more than 10 persons;

(2) "multipurpose passenger vehicle" means a motor vehicle with motive power (except a trailer), designed to carry 10 persons or fewer, which is constructed either on a truck chassis or with special features for occasional off-road operation;

(3) "passenger car" means a motor vehicle with motive power (except a multipurpose passenger vehicle, motorcycle, or trailer), designed for carrying 10 persons or fewer; and

(4) "truck" means a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment.

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

(a) TRAFFIC AND MOTOR VEHICLE SAFETY PROGRAM.—For the National Highway Traffic Safety Administration to carry out the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), there are authorized to be appropriated $68,722,000 for fiscal year 1992, $71,333,436 for fiscal year 1993, and $74,044,106 for fiscal year 1994.

(b) MOTOR VEHICLE INFORMATION AND COST SAVINGS PROGRAMS.—For the National Highway Traffic Safety Administration to carry out the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.), there are authorized to be appropriated $6,485,000 for fiscal year 1992, $6,731,430 for fiscal year 1993, and $6,987,224 for fiscal year 1994.

(c) NATIONAL DRIVER REGISTER ACT.—Section 211(b) of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended—

(1) by striking "and" the second time it appears; and

(2) by inserting immediately before the period at the end the following: ", not to exceed $6,131,000 for fiscal year 1992, not to exceed $6,363,978 for fiscal year 1993, and not to exceed $6,605,809 for fiscal year 1994".

(d) NHTSA HIGHWAY SAFETY PROGRAMS.—For the National Highway Traffic Safety Administration to carry out section 402 of title 23, United States Code, there are authorized to be appropriated, out of the Highway Trust Fund (other than the Mass Transit Account), $126,000,000 for fiscal year 1992, $130,788,000 for fiscal year 1993, $135,757,944 for fiscal year 1994, $140,916,745 for fiscal year 1995, and $146,271,573 for fiscal year 1996.

(e) NHTSA HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.—For the National Highway Traffic Safety Administration to carry out section 403 of title 23, United States Code, there are authorized to be appropriated, out of the Highway Trust Fund (other than the Mass Transit Account), $45,869,000 for each of the fiscal years 1992, 1993, 1994, 1995, and 1996.

SEC. 204. INTELLIGENT VEHICLE-HIGHWAY SYSTEMS.

The Secretary shall expend the sums authorized under section 203(e) as the Secretary deems necessary for the purpose of conducting research on intelligent vehicle-highway systems. The Secretary shall develop a strategic plan with specific milestones, goals, and objectives for that research. The research should place particular emphasis on aspects of those systems that will increase safety, and should identify any aspects of the systems that might degrade safety.

SEC. 205. SIDE IMPACT PROTECTION FOR VEHICLES.

(a) AMENDMENT OF FMVSS STANDARD 214.—The Secretary shall, not later than 12 months after the date of enactment of this Act, issue a final rule amending Federal Motor Vehicle Safety Standard 214, published as section 571.214 of title 49, Code of Federal Regulations. The rule shall establish performance criteria for improved head injury protection for occupants of passenger cars in side impact accidents.

(b) EXTENSION TO MULTIPURPOSE PASSENGER VEHICLES.—Not later than 18 months after the date of enactment of this Act, the Secretary shall issue a final rule to extend the applicability of such Standard 214 to multipurpose passenger vehicles, taking into account the performance criteria established by the final rule issued in accordance with subsection (a).

SEC. 206. AUTOMOBILE CRASHWORTHINESS DATA.

(a) STUDY AND INVESTIGATION.—

(1) ARRANGEMENTS WITH NATIONAL ACADEMY OF SCIENCES.—The Secretary shall, within 30 days after the date of enactment of this Act, enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation regarding means of establishing a method for calculating a uniform numerical rating, or series of ratings, which will enable consumers to compare meaningfully the crashworthiness of different passenger car and multipurpose passenger vehicle makes and models.

(2) CONTENTS OF STUDY.—Such study shall include examination of current and proposed crashworthiness tests and testing procedures and shall be directed to determining whether additional objective, accurate, and relevant information regarding the comparative crashworthiness of different passenger car and multipurpose passenger vehicle makes and models reasonably can be provided to consumers by means of a crashworthiness rating rule. Such study shall include examination of at least the following proposed elements of a crashworthiness rating rule:

(A) information on the degree to which different passenger car and multipurpose passenger vehicle makes and models will protect occupants across the range of motor ve-

hicle crash types when in use on public roads;

(B) a repeatable and objective test which is capable of identifying meaningful differences in the degree of crash protection provided occupants by the vehicles tested, with respect to such aspects of crashworthiness as occupant crash protection with and without use of manual seatbelts, fuel system integrity, and other relevant aspects;

(C) ratings which are accurate, simple in form, readily understandable, and of benefit to consumers in making informed decisions in the purchase of automobiles;

(D) dissemination of comparative crashworthiness ratings to consumers either at the time of introduction of a new passenger car or multipurpose passenger vehicle make or model or very soon after such time of introduction; and

(E) the development and dissemination of crashworthiness data at a cost which is reasonably balanced with the benefits of such data to consumers in making informed purchase decisions.

(3) REPORT BY NATIONAL ACADEMY OF SCIENCES.—Any such arrangement shall require the National Academy of Sciences to report to the Secretary and the Congress not later than 19 months after the date of enactment of this Act on the results of such study and investigation, together with its recommendations. The Secretary shall, to the extent permitted by law, furnish to the Academy upon its request any information which the Academy considers necessary to conduct the investigation and study required by this subsection.

(4) PUBLIC COMMENT.—Within 60 days after transmittal of the report of the National Academy of Sciences to the Secretary and the Congress under paragraph (3), the Secretary shall initiate a period (not longer than 90 days) for public comment on implementation of the recommendations of the National Academy of Sciences with respect to a rule promulgated under title II of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.) establishing an objectively based system for determining and publishing accurate comparative crashworthiness ratings for different makes and models of passenger cars and multipurpose passenger vehicles.

(5) DETERMINATION BY SECRETARY.—Not later than 180 days after the close of the public comment period provided for in paragraph (4) of this subsection, the Secretary shall determine, on the basis of the report of the National Academy of Sciences and the public comments on such report, whether an objectively based system can be established by means of which accurate and relevant information can be derived that reasonably predicts the degree to which different makes and models of passenger cars and multipurpose passenger vehicles provide protection to occupants against the risk of personal injury or death as a result of motor vehicle accidents. The Secretary shall promptly publish the basis of such determination, and shall transmit such determination to the Congress.

(b) RULE ON COMPARATIVE CRASHWORTHINESS RATING SYSTEM.—

(1) PROMULGATION.—If the Secretary determines that the system described in subsection (a)(5) can be established, the Secretary shall, subject to the exception provided in paragraph (2), not later than 3 years after the date of enactment of this Act, promulgate a final rule under section 201 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941) establishing an objectively based system for determining and publishing accurate comparative crashworthiness ratings for different makes and models of passenger cars and multipurpose passenger vehicles. The rule promulgated under such section 201 shall be practicable and shall provide to the public relevant objective information in a simple and readily understandable form in order to facilitate comparison among the various makes and models of passenger cars and multipurpose passenger vehicles so as to contribute meaningfully to informed purchase decisions.

(2) REVIEW BY CONGRESSIONAL COMMITTEES.—The Secretary shall not promulgate such rule unless—

(A) a period of 60 calendar days has passed after the Secretary has transmitted to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives a summary of the comments received during the period for public comment specified in subsection (a)(4); or

(B) each such committee before the expiration of such 60-day period has transmitted to the Secretary written notice to the effect that such committee has no objection to the promulgation of such rule.

(c) RULE ON PROVIDING CRASHWORTHINESS INFORMATION TO PURCHASERS.—If the Secretary promulgates a rule under subsection (b), not later than 6 months after such promulgation, the Secretary shall by rule establish procedures requiring passenger cars and multipurpose passenger vehicle dealers to make available to prospective passenger car and multipurpose passenger vehicle purchasers information developed by the Secretary and provided to the dealer which contains data comparing the crashworthiness of passenger cars and multipurpose passenger vehicles.

SEC. 207. STANDARDS COMPLIANCE.

Section 103 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392) is amended by adding at the end the following new subsection:

"(j)(1) The Secretary shall establish a schedule for use in ensuring compliance with each Federal motor vehicle safety standard established under this Act which the Secretary determines is capable of being tested. Such schedule shall ensure that each such standard is the subject of testing and evaluation on a regular, rotating basis.

"(2) The Secretary shall, not later than 6 months after the date of enactment of this subsection, conduct a review of the method for the collection of data regarding accidents related to Federal motor vehicle safety standards established under this Act. The Secretary shall consider the desirability of collecting data in addition to that information collected as of the date of enactment of this subsection, and shall estimate the costs involved in the collection of such additional data, as well as the benefits to safety likely to be derived from such collection. If the Secretary determines that such benefits outweigh the costs of such collection, the Secretary shall collect such additional data and utilize it in determining which motor vehicles should be the subject of testing for compliance with Federal motor vehicle safety standards established under this Act.".

SEC. 208. INVESTIGATION AND PENALTY PROCEDURES.

(a) INVESTIGATION PROCEDURES.—Section 112(a)(1) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1401(a)(1)) is amended by adding at the end the following: "The Secretary shall establish written guidelines and procedures for conducting any inspection or investigation regarding noncompliance with this title or any rules, regulations, or orders issued under this title. Such guidelines and procedures shall indicate timetables for processing of such inspections and investigations to ensure that such processing occurs in an expeditious and thorough manner. In addition, the Secretary shall develop criteria and procedures for use in determining when the results of such an investigation should be considered by the Secretary to be the subject of a civil penalty under section 109 of this title. Nothing in this paragraph shall be construed to limit the ability of the Secretary to exceed any time limitation specified in such timetables where the Secretary determines that additional time is necessary for the processing of any such inspection or investigation.".

(b) CIVIL PENALTY PROCEDURES.—Section 109(a) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1398(a)) is amended by adding at the end the following: "The Secretary shall establish procedures for determining the manner in which, and the time within which, a determination should be made regarding whether a civil penalty should be imposed under this section. Nothing in this subsection shall be construed to limit the ability of the Secretary to exceed any time limitation specified for making any such determination where the Secretary determines that additional time is necessary for making a determination regarding whether a civil penalty should be imposed under this section.".

SEC. 209. MULTIPURPOSE PASSENGER VEHICLE SAFETY.

(a) FINDINGS.—The Congress finds that—

(1) multipurpose passenger vehicles have become increasingly popular during this decade and are being used increasingly for the transportation of passengers, not property; and

(2) the safety of passengers in multipurpose passenger vehicles has been compromised by the failure to apply to them the Federal motor vehicle safety standards applicable to passenger cars.

(b) CLASSIFICATION REVIEW.—

(1) RULEMAKING PROCEEDING.—In accordance with the applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), including the provisions of section 103(a) of such Act (15 U.S.C. 1392(a)) requiring that Federal motor vehicle safety standards be practicable, meet the need for motor vehicle safety, and be stated in objective terms, the Secretary shall, not later than 12 months after the date of enactment of this Act, complete a rulemaking proceeding to review the system of classification of vehicles with a gross vehicle weight under 10,000 pounds to determine if such vehicles should be reclassified.

(2) CLASSIFICATION CONSISTENCY.—Any reclassification pursuant to paragraph (1) shall, to the maximum extent practicable, classify as a passenger car every motor vehicle determined by the Department of the Treasury or United States Customs Service to be a motor car or other motor vehicle principally designed for the transport of persons under heading 8703 of the Harmonized Tariff Schedule of the United States. Nothing in this section shall prevent the Secretary from classifying as a passenger car any motor vehicle determined by the Department of the Treasury or United States Customs Service to be a motor vehicle for the transport of goods under heading 8704 of such Harmonized Tariff Schedule.

SEC. 210. ROLLOVER PROTECTION.

The Secretary shall, within 12 months after the date of enactment of this Act, complete a rulemaking proceeding to consider establishment of a Federal Motor Vehicle Safety Standard to protect against unreasonable risk of rollover of passenger cars and multipurpose passenger vehicles.

SEC. 211. REAR SEATBELTS.

The Secretary shall expend such portion of the funds authorized to be appropriated under the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.), for each of the fiscal years 1992 and 1993, as the Secretary deems necessary for the purpose of disseminating information to consumers regarding the manner in which passenger cars may be retrofitted with lap and shoulder rear seatbelts.

SEC. 212. IMPACT RESISTANCE CAPABILITY OF BUMPERS.

(a) DISCLOSURE OF BUMPER IMPACT CAPABILITY.—The Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.) is amended by inserting immediately after section 102 the following new subsection:

"DISCLOSURE OF BUMPER IMPACT CAPABILITY

"SEC. 102A. (a) The Secretary shall promulgate, in accordance with the provisions of this section, a regulation establishing passenger motor vehicle bumper system labeling requirements. Such regulation shall apply to passenger motor vehicles manufactured for model years beginning more than 180 days after the date such regulation is promulgated, as provided in subsection (c)(2) of this section.

"(b)(1) The regulation required to be promulgated in subsection (a) of this section shall provide that, before any passenger motor vehicle is offered for sale, the manufacturer shall affix a label to such vehicle, in a format prescribed in such regulation, disclosing an impact speed at which the manufacturer represents that the vehicle meets the applicable damage criteria.

"(2) For purposes of this subsection, the term 'applicable damage criteria' means the damage criteria applicable under section 581.5(c) of title 49, Code of Federal Regulations (as in effect on the date of enactment of this section).

"(c)(1) Not later than 90 days after the date of enactment of this section, the Secretary shall publish in the Federal Register a proposed initial regulation under this section.

"(2) Not later than 180 days after such date of enactment, the Secretary shall promulgate a final initial regulation under this section.

"(d) The Secretary may allow a manufacturer to comply with the labeling requirements of subsection (b) of this section by permitting such manufacturer to make the bumper system impact speed disclosure required in subsection (b) of this section on the label required by section 506 of this Act or section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232).

"(e) The regulation promulgated under subsection (a) of this section shall provide that the information disclosed under this section be provided to the Secretary at the beginning of the model year for the model involved. As soon as practicable after receiving such information, the Secretary shall furnish and distribute to the public such information in a simple and readily understandable form in order to facilitate comparison among the various types of passenger motor vehicles. The Secretary may by rule require automobile dealers to distribute to prospective purchasers any information compiled pursuant to this subsection.

"(f) For purposes of this section, the term 'passenger motor vehicle' means any motor vehicle to which the standard under part 581 of title 49, Code of Federal Regulations, is applicable.".

(b) AMENDMENT OF BUMPER STANDARD.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall amend the bumper standard published as part 581 of title 49, Code of Federal Regulations, to ensure that such standard is identical to the bumper standard under such part 581 which was in effect on January 1, 1982. The amended standard shall apply to all passenger cars manufactured after September 1, 1992.

(2) AUTHORITY TO REQUIRE HIGHER STANDARD.—Nothing in this subsection shall be construed to prohibit the Secretary from requiring under such part 581 that passenger car bumpers be capable of resisting impact speeds higher than those specified in the bumper standard in effect under such part 581 on January 1, 1982.

SEC. 213. CHILD BOOSTER SEATS.

(a) IN GENERAL.—In accordance with applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), the Secretary shall conduct a rulemaking proceeding to amend Federal Motor Vehicle Safety Standard 213, published as section 571.213 of title 49, Code of Federal Regulations, to increase the safety of child booster seats used in passenger cars. The proceeding shall be initiated not later than 30 days after the date of enactment of this Act and completed not later than 12 months after such date of enactment.

(b) DEFINITION.—As used in this section, the term "child booster seat" has the meaning given the term "booster seat" in section 571.213 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this Act.

SEC. 214. AIRBAG REQUIREMENTS.

(a) AIRBAGS FOR CARS ACQUIRED FOR FEDERAL USE.—The Secretary, in cooperation with the Administrator of General Services and the heads of other appropriate Federal agencies, shall establish a program requiring that all passenger cars acquired after September 30, 1991, for use by the Federal Government be equipped, to the maximum extent practicable, with driver-side airbags and that all passenger cars acquired after September 30, 1993, for use by the Federal Government be equipped, to the maximum extent practicable, with airbags for both the driver and front seat outboard seating positions.

(b) AIRBAGS FOR CERTAIN OTHER VEHICLES.—

(1) DEADLINES FOR INSTALLATION.—Passenger cars, and those trucks, buses, and multipurpose passenger vehicles that have a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, shall, in accordance with the following schedule, be equipped with airbags complying with the occupant crash protection requirements under S4.1.2.1 of Federal Motor Vehicle Safety Standard 208, published as section 571.208 of title 49, Code of Federal Regulations:

(A) All passenger cars manufactured on and after September 1, 1995, shall be so equipped for both the driver and right front seat outboard seating positions.

(B) All such trucks, buses, and multipurpose passenger vehicles manufactured on and after September 1, 1996, and before September 1, 1997, shall, at a minimum, be so equipped for the driver side.

(C) All such trucks, buses, and multipurpose passenger vehicles manufactured on and after September 1, 1997, shall be so equipped for both the driver and right front seat outboard seating positions.

(2) TREATMENT OF AIRBAG REQUIREMENTS.—For purposes of sections 108 through 112, 114, 115, 116, 118, 120, 121, and 151 through 158 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1397 through 1401, 1403, 1404, 1405, 1406, 1408, 1409, and 1411 through 1418), the requirements of paragraph (1) of this subsection are deemed to be a Federal motor vehicle safety standard prescribed pursuant to section 103 of that Act (15 U.S.C. 1392).

SEC. 215. STATE MOTOR VEHICLE SAFETY INSPECTION PROGRAMS.

Part A of title III of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1961 et seq.) is amended by adding at the end the following new section:

"STATE MOTOR VEHICLE SAFETY INSPECTION PROGRAMS

"SEC. 304. (a) The Congress finds that—

"(1) State motor vehicle safety inspection programs, when properly administered, can reduce the rate of highway traffic accidents by a significant percentage;

"(2) the 1990 amendments to the Clean Air Act will subject approximately 60 percent of the vehicles in the United States to emissions inspection;

"(3) as States plan to implement the requirement for emissions inspections, there is considerable potential for simultaneously and economically implementing effective motor vehicle safety inspection programs;

"(4) the Secretary, as part of the effort to reduce highway accidents, should make every effort to ensure that the potential for effective State motor vehicle safety inspection programs is realized; and

"(5) the Secretary and the Administrator of the Environmental Protection Agency shall coordinate their efforts so as to ensure maximum coordination of motor vehicle safety inspections and required emissions inspections.

"(b) The Secretary shall, within six months after the date of enactment of this section and every year thereafter, submit a report to Congress detailing the efforts of the Secretary to ensure that State motor vehicle safety inspection programs are implemented in the most effective manner possible. The report shall—

"(1) specify Federal manpower allocations for support of State motor vehicle safety inspection efforts;

"(2) specify allocations and expenditures of Federal funds on such efforts;

"(3) describe the extent and effect of the coordination by the Secretary and the Administrator of the Environmental Protection Agency of their respective efforts regarding motor vehicle safety inspection and required emissions inspections, and of the coordination of State motor vehicle safety inspections and emissions inspections;

"(4) list the States that do not have a periodic safety inspection program for motor vehicles that meets the requirements of Highway Safety Program Standard Number 1 and part 570 of title 49, Code of Federal Regulations; and

"(5) include any data, furnished by the States that do operate such safety inspection programs, that concerns the relative effectiveness of their particular programs.".

SEC. 216. RECALL OF CERTAIN MOTOR VEHICLES.

(a) NOTIFICATION OF DEFECT OR FAILURE TO COMPLY.—Section 153 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1413) is amended by adding at the end the following new subsections:

"(d) If the Secretary determines that a notification sent by a manufacturer pursuant to subsection (c) of this section has not resulted in an adequate number of vehicles or items of equipment being returned for remedy, the Secretary may direct the manufacturer to send a second notification in such manner as the Secretary may by regulation prescribe.

"(e)(1) Any lessor who receives a notification required by section 151 or 152 pertaining to any leased motor vehicle shall send a copy of such notice to the lessee in such manner as the Secretary may by regulation prescribe.

"(2) For purposes of this subsection, the term 'leased motor vehicle' means any motor vehicle which is leased to a person for a term of at least four months by a lessor who has leased five or more vehicles in the twelve months preceding the date of the notification.".

(b) LIMITATION ON SALE OR LEASE OF CERTAIN VEHICLES.—Section 154 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1414) is amended by adding at the end the following:

"(d) If notification is required under section 151 or by an order under section 152(b) and has been furnished by the manufacturer to a dealer of motor vehicles with respect to any new motor vehicle or new item of replacement equipment in the dealer's possession at the time of notification which fails to comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety, such dealer may sell or lease such motor vehicle or item of replacement equipment only if—

"(1) the defect or failure to comply has been remedied in accordance with this section before delivery under such sale or lease; or

"(2) in the case of notification required by an order under section 152(b), enforcement of the order has been restrained in an action to which section 155(a) applies or such order has been set aside in such an action.

Nothing in this subsection shall be construed to prohibit any dealer from offering for sale or lease such vehicle or item of equipment.".

SEC. 217. DARKENED WINDOWS.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding on the use of darkened windshields and window glass in passenger cars and multipurpose passenger vehicles, including but not limited to the issues of—

(1) the harmonization of light transmittance requirements for multipurpose passenger vehicles with light transmittance requirements for passenger cars;

(2) performance requirements for light transmittance; and

(3) appropriate levels of light transmittance.

The proceeding shall consider the effects of such issues in the context of the safe operation of passenger cars and multipurpose passenger vehicles, as well as on the hazards to the safety of law enforcement personnel as a result of such use of darkened windshields and window glass.

(b) DEADLINES.—The proceeding required by subsection (a) shall be initiated not later than 6 months after the date of enactment of this Act and completed not later than 18 months after such date of enactment.

SEC. 218. GRANT PROGRAM CONCERNING USE OF SEATBELTS AND CHILD RESTRAINT SYSTEMS.

(a) IN GENERAL.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§411. Seatbelt and child restraint programs

"(a) Subject to the provisions of this section, the Secretary shall make grants to those States which adopt and implement seatbelt and child restraint programs which include measures described in this section to foster the increased use of seatbelts and the correct use of child restraint systems. Such grants may only be used by recipient States to implement and enforce such measures.

"(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for seatbelt and child restraint programs at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

"(c) No State may receive grants under this section in more than three fiscal years. The Federal share payable for any grant under this section shall not exceed—

"(1) in the first fiscal year a State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year the seatbelt and child restraint program adopted by the State pursuant to subsection (a) of this section;

"(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

"(3) in the third fiscal year the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

"(d) Subject to subsection (c), the amount of a grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e) of this section shall equal 20 percent of the amount apportioned to such State for fiscal year 1991 under section 402.

"(e) A State is eligible for a grant under this section if such State—

"(1) has in force and effect a law requiring all front seat occupants of a passenger car to use seatbelts;

(2) has achieved—

"(A) in the year immediately preceding a first-year grant, the lesser of either (i) 70 percent seatbelt use by all front seat occupants of passenger cars in the State or (ii) a rate of seatbelt use by all such occupants that is 20 percentage points higher than the rate achieved in 1990;

"(B) in the year immediately preceding a second-year grant, the lesser of either (i) 80 percent seatbelt use by all such occupants or (ii) the rate of seatbelt use by all such occupants that is 35 percentage points higher than the rate achieved in 1990; and

"(C) in the year immediately preceding a third-year grant, the lesser of either (i) 90 percent seatbelt use by all such occupants or (ii) the rate of seatbelt use by all such occupants that is 45 percentage points higher than the rate achieved in 1990; and

"(3) has in force and effect an effective program, as determined by the Secretary, for encouraging the correct use of child restraint systems.

"(f) As used in this section, the term 'child restraint system' has the meaning given such term in section 571.213 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.

"(g) There are authorized to be appropriated, from any funds in the Treasury not otherwise appropriated, to carry out this section, $10,000,000 for the fiscal year 1991, and $20,000,000 for each of the fiscal years 1992 and 1993.".

(b) CONFORMING AMENDMENT.—The analysis of chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following:

"411. Seatbelt and child restraint programs.".

SEC. 219. METHODS OF REDUCING HEAD INJURIES.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding to consider methods of reducing head injuries in passenger cars and multipurpose passenger vehicles from contact with vehicle interior components, including those in the head impact area as defined in section 571.3(b) of title 49, Code of Federal Regulations, as in effect on the date of enactment of this Act, and to revise the Federal motor vehicle safety standards as appropriate.

(b) DEADLINES.—The proceeding required under subsection (a) shall be initiated not less than 60 days after the date of enactment of this Act and completed not later than 2 years after such date of enactment.

SEC. 220. PEDESTRIAN SAFETY.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding to consider the establishment of a standard to minimize pedestrian death and injury, including injury to the head, thorax, and legs, attributable to vehicle components.

(b) DEADLINES.—The proceeding required under subsection (a) shall be initiated not later than 6 months after the date of enactment of this Act and completed not later than 2 years after such date of enactment.

SEC. 221. DAYTIME RUNNING LIGHTS.

(a) RULEMAKING PROCEEDING.—Not later than 12 months after the date of enactment of this Act, the Secretary shall complete a rulemaking proceeding to amend Federal Motor Vehicle Safety Standard 108, published as section 571.108 of title 49, Code of Federal Regulations, to authorize passenger cars and multipurpose passenger vehicles to be equipped with daytime running lights, notwithstanding any State law or regulation that affects the use of such lights.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the safety implications of the use of such lights in the United States, including the recommendations of the Secretary concerning whether to require passenger cars and multipurpose passenger vehicles to be equipped with such lights.

SEC. 222. ANTILOCK BRAKE SYSTEMS.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding concerning whether to adopt a Federal motor vehicle safety standard requiring antilock brake systems for all passenger cars and multipurpose passenger vehicles manufactured after September 1, 1996.

(b) DEADLINES.—The proceeding required by subsection (a) shall be initiated not later than 90 days after the date of enactment of this Act and completed not later than 12 months after such date of enactment.

SEC. 223. HEADS-UP DISPLAYS.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding to consider the establishment of a standard requiring that passenger cars and multipurpose passenger vehicles shall be equipped with heads-up displays capable of projecting speed, fuel, and other instrument readings on the lower part of the windshield, enabling the driver to check such readings without looking down.

(b) DEADLINES.—The proceeding required by subsection (a) shall be initiated not later than 90 days after the date of enactment of this Act and completed not later than 12 months after such date of enactment.

SEC. 224. SAFETY BELT DESIGN.

(a) RULEMAKING PROCEEDING.—The Secretary shall conduct a rulemaking proceeding to consider whether to amend any existing standard applicable to seatbelts, as published under part 571 of title 49, Code of Federal Regulations, for modification of seatbelt design in order to take into account the needs of children and short adults.

(b) DEADLINES.—The proceeding required by subsection (a) shall be initiated not later than 90 days after the date of enactment of this Act and completed not later than 12 months after such date of enactment.

SEC. 225. CRITERIA FOR STANDARDS.

Any standard established under a proceeding required by section 210, 217, 219, 220, 221, 222, 223, or 224 shall be in accordance with the applicable provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), including the provisions of section 103(a) of that Act (15 U.S.C. 1392(a)) requiring that Federal motor vehicle safety standards be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

SEC. 226. IMPAIRED DRIVING ENFORCEMENT.

(a) SHORT TITLE.—This section may be cited as the "Impaired Driving Prevention Act of 1991".

(b) ESTABLISHMENT OF GRANT PROGRAM.—Chapter 4 of title 23, United States Code, is amended by inserting immediately after section 404 the following new section:

"§ 405. Impaired driving enforcement programs

"(a) GENERAL AUTHORITY.—Subject to the provisions of this section, the Secretary shall make basic and supplemental grants to those States which adopt and implement impaired driving enforcement programs which include measures, described in this section, to improve the effectiveness of the enforcement of laws to prevent impaired driving. Such grants may only be used by recipient States to implement and enforce such measures.

"(b) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for impaired driving enforcement programs at or above the average level of such expenditures in its 2 fiscal years preceding the fiscal year in which this section is enacted.

"(c) FEDERAL SHARE.—No State may receive grants under this section in more than 5 fiscal years. The Federal share payable for any grant under this section shall not exceed—

"(1) in the first fiscal year a State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year the impaired driving enforcement program adopted by the State pursuant to subsection (a);

"(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

"(3) in the third fiscal year the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

"(d) MAXIMUM AMOUNT OF BASIC GRANTS.—Subject to subsection (c), the amount of a basic grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e) shall equal 30 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title.

"(e) ELIGIBILITY FOR BASIC GRANTS.—

"(1) GENERAL.—For purposes of this section, a State is eligible for a basic grant if such State—

"(A) provides for a program (funded at the level required under paragraph (2)) to conduct highway checkpoints for the detection and deterrence of persons who operate motor vehicles while under the influence of alcohol or a controlled substance, including the training, manpower, and equipment associated with the conduct of such checkpoints;

"(B) provides for a program (funded at the level required under paragraph (2)) to acquire video equipment to be used in detecting persons who operate motor vehicles while under the influence of alcohol or a controlled substance and in effectively prosecuting those persons, and to train personnel in the use of that equipment;

"(C) establishes an expedited driver's license suspension or revocation system for persons who operate motor vehicles while under the influence of alcohol which requires that—

"(i) when a law enforcement officer has probable cause under State law to believe a person has committed an alcohol-related traffic offense and such person is determined, on the basis of a chemical test, to have been under the influence of alcohol while operating the motor vehicle or refuses to submit to such a test as proposed by the officer, the officer shall serve such person with a written notice of suspension or revocation of the driver's license of such person and take possession of such driver's license;

"(ii) the notice of suspension or revocation referred to in clause (i) shall provide information on the administrative procedures under which the State may suspend or revoke in accordance with the objectives of this section a driver's license of a person for operating a motor vehicle while under the influence of alcohol and shall specify any rights of the operator under such procedures;

"(iii) the State shall provide, in the administrative procedures referred to in clause (ii), for due process of law, including the right to an administrative review of a driver's license suspension or revocation within the time period specified in clause (vi);

"(iv) after serving notice and taking possession of a driver's license in accordance with clause (i), the law enforcement officer immediately shall report to the State entity responsible for administering drivers' licenses all information relevant to the action taken in accordance with this clause;

"(v) in the case of a person who, in any 5-year period beginning after the date of enactment of this section, is determined on the basis of a chemical test to have been operating a motor vehicle under the influence of alcohol or is determined to have refused to submit to such a test as proposed by the law enforcement officer, the State entity responsible for administering drivers' licenses, upon receipt of the report of the law enforcement officer—

"(I) shall suspend the driver's license of such person for a period of not less than 90 days if such person is a first offender in such 5-year period; and

"(II) shall suspend the driver's license of such person for a period of not less than 1 year, or revoke such license, if such person is a repeat offender in such 5-year period; and

"(vi) the suspension and revocation referred to under clause (iv) shall take effect not later than 30 days after the day on which the person first received notice of the suspension or revocation in accordance with clause (ii);

"(D) requires that any person with a blood alcohol concentration equal to or greater than the following percentage when operating a motor vehicle shall be deemed to be driving while under the influence of alcohol:

"(i) 0.10 percent for each of the first 3 fiscal years in which a basic grant is received; and

"(ii) 0.08 percent for each of the last 2 fiscal years in which a basic grant is received;

"(E) enacts a statute which provides that—

"(i) any person convicted of a first violation of driving under the influence of alcohol shall receive—

"(I) a mandatory license suspension for a period of not less than 90 days; and

"(II) either an assignment of 100 hours of community service or a minimum sentence of imprisonment for 48 consecutive hours;

"(ii) any person convicted of a second violation of driving under the influence of alcohol within 5 years after a conviction for the same offense shall receive a mandatory minimum sentence of imprisonment for 10 days and license revocation for not less than 1 year;

"(iii) any person convicted of a third or subsequent violation of driving under the influence of alcohol within 5 years after a prior conviction for the same offense shall—

"(I) receive a mandatory minimum sentence of imprisonment for 120 days; and

"(II) have his or her license revoked for not less than 3 years; and

"(iv) any person convicted of driving with a suspended or revoked license or in violation of a restriction imposed as a result of a conviction for driving under the influence of alcohol shall receive a mandatory sentence of imprisonment for at least 30 days, and shall upon release from imprisonment receive an additional period of license suspension or revocation of not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license; and

"(F) provides for a self-sustaining drunk driving prevention program under which a significant portion of the fines and surcharges collected from persons by reason of their operation of a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

"(2) REQUIRED FUNDING LEVELS.—The funding level for the program described in paragraph (1)(A), and for the program described in paragraph (1)(B), shall be an amount equal to or greater than—

"(A) the average level of expenditures by the State for such program in its 2 fiscal years preceding the date of enactment of this section, plus

"(B) 2.4 percent of the amount apportioned to the State for fiscal year 1989 under section 402 of this title.

"(3) WAIVER FOR REDUCED FATALITIES.—If the rate of alcohol-related fatalities (as defined in the Fatal Accident Reporting System of the National Highway Traffic Safety Administration) in a State decreases by an average of 3 percent per calendar year for the 5 consecutive calendar years prior to the fiscal year for which the State would receive a basic grant under this section, the Secretary

may waive for that State the basic grant eligibility requirements of one subparagraph among subparagraphs (A) through (F) of paragraph (1).

"(f) SUPPLEMENTAL GRANT PROGRAM.—

"(1) MANDATORY BLOOD ALCOHOL CONCENTRATION TESTING PROGRAMS.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c) of this section, not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State provides for mandatory blood alcohol concentration testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in an accident resulting in the loss of human life or, as determined by the Secretary, serious bodily injury, has committed an alcohol-related traffic offense.

"(2) PROGRAM FOR PREVENTING DRIVERS UNDER AGE 21 FROM OBTAINING ALCOHOLIC BEVERAGES.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State provides for and increases its enforcement of an effective system for preventing persons under age 21 from obtaining alcoholic beverages, which may include the issuance of drivers' licenses to persons under age 21 that are easily distinguishable in appearance from drivers' licenses issued to persons 21 years of age and older.

"(3) DRUGGED DRIVING PREVENTION.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State—

"(A) provides for laws concerning drugged driving under which—

"(i) a person shall not drive or be in actual physical control of a motor vehicle while under the influence of alcohol, a controlled substance or combination of controlled substances, or any combination of alcohol and controlled substances;

"(ii) any person who operates a motor vehicle upon the highways of the State shall be deemed to have given consent to a test or tests of his or her blood, breath, or urine for the purpose of determining the blood alcohol concentration or the presence of controlled substances in his or her body;

"(iii) the driver's license of a person shall be suspended promptly, for a period of not less than 90 days in the case of a first offender and not less than 1 year in the case of any repeat offender, when a law enforcement officer has probable cause under State law to believe such person has committed a traffic offense relating to controlled substances use, and such person (I) is determined, on the basis of 1 or more chemical tests, to have been under the influence of controlled substances while operating a motor vehicle, or (II) refuses to submit to such a test as proposed by the officer;

"(B) enacts a statute which provides that—

"(i) any person convicted of a first violation of driving under the influence of controlled substances or alcohol, or both, shall receive—

"(I) a mandatory license suspension for a period of not less than 90 days; and

"(II) either an assignment of 100 hours of community service or a minimum sentence of imprisonment for 48 consecutive hours;

"(ii) any person convicted of a second violation of driving under the influence of controlled substances or alcohol, or both, within 5 years after a conviction for the same offense shall receive a mandatory minimum sentence of imprisonment for 10 days and license revocation for not less than 1 year;

"(iii) any person convicted of a third or subsequent violation of driving under the influence of controlled substances or alcohol, or both, within 5 years after a prior conviction for the same offense shall—

"(I) receive a mandatory minimum sentence of imprisonment for 120 days; and

"(II) have his or her license revoked for not less than 3 years; and

"(iv) any person convicted of driving with a suspended or revoked license or in violation of a restriction imposed as a result of a conviction for driving under the influence of controlled substances or alcohol, or both, shall receive a mandatory sentence of imprisonment for at least 30 days, and shall upon release from imprisonment receive an additional period of license suspension or revocation of not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license;

"(C) provides for an effective system, as determined by the Secretary, for—

"(i) the detection of driving under the influence of controlled substances;

"(ii) the administration of a chemical test or tests to any driver who a law enforcement officer has probable cause to believe has committed a traffic offense relating to controlled substances use; and

"(iii) in instances where such probable cause exists, the prosecution of (I) those who are determined, on the basis of 1 or more chemical tests, to have been operating a motor vehicle while under the influence of controlled substances and (II) those who refuse to submit to such a test as proposed by a law enforcement officer; and

"(D) has in effect two of the following programs:

"(i) an effective educational program, as determined by the Secretary, for the prevention of driving under the influence of controlled substances;

"(ii) an effective program, as determined by the Secretary, for training law enforcement officers to detect driving under the influence of controlled substances; and

"(iii) an effective program, as determined by the Secretary, for the rehabilitation and treatment of those convicted of driving under the influence of controlled substances.

"(4) BLOOD ALCOHOL CONCENTRATION STANDARD.—For purposes of this section, a State is eligible for a supplemental grant (only for any of the first 3 fiscal years in which a basic grant is received) in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State requires that any person with a blood alcohol concentration of 0.08 percent or greater when operating a motor vehicle shall be deemed to be driving while under the influence of alcohol.

"(5) UNLAWFUL OPEN CONTAINER AND CONSUMPTION OF ALCOHOL PROGRAMS.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State makes unlawful the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway, except—

"(A) as allowed in the passenger area, by persons (other than the driver), of any motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers; or

"(B) as otherwise specifically allowed by such State, with the approval of the Secretary, but in no event may the driver of such motor vehicle be allowed to possess or consume an alcoholic beverage in the passenger areas.

"(6) SUSPENSION OF REGISTRATION AND RETURN OF LICENSE PLATE PROGRAM.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State provides for the suspension of the registration of, and the return to such State of the license plates for, any motor vehicle owned by an individual who—

"(A) has been convicted on more than 1 occasion of an alcohol-related traffic offense within any 5-year period after the date of enactment of this section; or

"(B) has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for such an offense.

A State may provide limited exceptions to such suspension of registration or return of license plates, on an individual basis, to avoid undue hardship to any individual, including any family member of the convicted individual, and any co-owner of the motor vehicle, who is completely dependent on the motor vehicle for the necessities of life. Such exceptions may not result in unrestricted reinstatement of the registration or unrestricted return of the license plates of the motor vehicle.

"(7) SUPPLEMENTAL GRANTS AS BEING IN ADDITION TO OTHER GRANTS.—A supplemental grant under this section shall be in addition to any basic grant or any other supplemental grant received by such State.

"(g) EFFECT OF PARTICIPATION IN PROGRAMS UNDER SECTIONS 408 AND 410.—No State may receive a grant under this section for any fiscal year for which that State is a recipient of a grant under section 408 or 410 of this title.

"(h) DEFINITIONS.—As used in this section—

"(1) ALCOHOLIC BEVERAGE.—The term 'alcoholic beverage' has the meaning such term has under section 158(c) of this title.

"(2) CONTROLLED SUBSTANCES.—The term 'controlled substances' has the meaning such term has under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

"(3) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning such term has under section 154(b) of this title.

"(4) OPEN ALCOHOLIC BEVERAGE CONTAINER.—The term 'open alcoholic beverage container' means any bottle, can, or other receptacle—

"(A) which contains any amount of an alcoholic beverage; and

"(B)(i) which is open or has a broken seal, or

"(ii) the contents of which are partially removed.

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, out of the Highway Trust Fund (other than the Mass Transit Account), $25,000,000 for the fiscal year ending September 30, 1992, and $50,000,000 per fiscal year for the fiscal years ending September 30, 1993, September 30, 1994, September 30, 1995, and September 30, 1996, respectively. Sums authorized by this subsection shall remain available until expended.".

(c) DEADLINES FOR ISSUANCE OF REGULATIONS.—The Secretary shall issue and publish in the Federal Register proposed regulations to implement section 405 of title 23, United States Code (as added by subsection (b) of this section), not later than December 1, 1992. The final regulations for such implementation shall be issued, published in the Federal Register, and transmitted to Congress before March 1, 1994.

(d) CONFORMING AMENDMENT.—The analysis of chapter 4 of title 23, United States Code, is amended by inserting immediately after the item relating to section 404 the following new item:

"405. Impaired driving enforcement programs.".

PART B—MOTOR CARRIER SAFETY ASSISTANCE PROGRAM REAUTHORIZATION

SEC. 231. SHORT TITLE.

This part may be cited as the "Motor Carrier Safety Assistance Program Reauthorization Act of 1991".

SEC. 232. MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.

(a) AMENDMENT TO TITLE 23, U.S.C.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§412. Motor carrier safety assistance program

"(a) GRANTS.—The Secretary is authorized to make grants to eligible States for the development or implementation, or both, of programs for—

"(1) the enforcement of Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety (including vehicle size and weight requirements and commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), or compatible State rules, regulations, standards, and orders; and

"(2) effective enforcement of State or local traffic safety laws and regulations designed to promote the safe operation and driving of commercial motor vehicles.

A State shall be eligible to receive grants under this section only if the State has a plan approved by the Secretary under subsection (b).

"(b) STATE PLANS.—

"(1) SUBMISSION.—The Secretary shall formulate procedures for a State to submit annually a plan where the State agrees to adopt, and to assume responsibility for enforcing—

"(A) Federal rules, regulations, standards, and orders applicable to commercial motor vehicle safety (including vehicle size and weight requirements and commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), or compatible State rules, regulations, standards, and orders; and

"(B) State or local traffic safety laws and regulations designed to promote the safe operation and driving of commercial motor vehicles.

"(2) APPROVAL.—Subject to paragraph (3), a State plan submitted under paragraph (1) shall be approved by the Secretary if, in the Secretary's judgment, the plan is adequate to promote the objectives of this section, and the plan—

"(A) designates the State motor vehicle safety agency responsible for administering the plan;

"(B) ensures that the State motor vehicle safety agency and other State or local agencies participating in the plan have or will have the legal authority, resources, and qualified personnel necessary for administering the plan;

"(C) ensures that the State will devote adequate funds for administering the plan;

"(D) provides a right of entry and inspection to carry out the plan and provides that the State will grant maximum reciprocity for inspections conducted pursuant to the North American Inspection Standard, through the use of a nationally accepted system allowing ready identification of previously inspected commercial motor vehicles;

"(E) provides that the State motor vehicle safety agency will adopt uniform reporting requirements and use uniform forms for recordkeeping, inspections, and investigations, as may be established and required by the Secretary;

"(F) provides that all required reports be submitted to the State motor vehicle safety agency and that the agency make the reports available to the Secretary, upon request;

"(G) ensures State participation in motor carrier information systems, including data bases containing data and information on drivers, vehicle inspections, driver operating compliance with applicable traffic safety laws and regulations, vehicle safety and compliance reviews, traffic accidents, and the weighing of vehicles;

"(H) ensures that commercial motor vehicle size and weight inspection activities will not diminish the effectiveness of other safety initiatives;

"(I) gives satisfactory assurances that the State will conduct effective activities—

"(i) to remove impaired commercial motor vehicle drivers from our Nation's highways through adequate enforcement of regulations on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment, and to provide an appropriate level of training to its Motor Carrier Safety Assistance Program officers and employees on the recognition of drivers impaired by alcohol or controlled substances;

"(ii) to promote enforcement of the requirements relating to the licensing of commercial motor vehicle drivers, especially including the checking of the status of commercial driver's licenses;

"(iii) to ensure adequate enforcement of State or local traffic safety laws and regulations that affect commercial motor vehicle safety; and

"(iv) to improve enforcement of hazardous materials transportation regulations by encouraging more inspections of shipper facilities affecting highway transportation and more comprehensive inspections of the loads of commercial motor vehicles transporting hazardous materials;

"(J) gives satisfactory assurances that the State will promote—

"(i) effective interdiction activities affecting the transportation of controlled substances by commercial motor vehicle drivers and to provide training on appropriate strategies for carrying out such interdiction activities; and

"(ii) effective use of trained and qualified officers and employees of political subdivisions or local governments, under the supervision and direction of the State motor vehicle safety agency, in the enforcement of regulations affecting commercial motor vehicle safety and hazardous materials transportation safety; and

"(K) seeks to ensure that fines imposed and collected by the State will be reasonable and appropriate and provides that, to the maximum extent practicable, the State will seek to implement into law and practice the recommended fine schedule published by the Commercial Vehicle Safety Alliance.

"(3) ADDITIONAL PLAN REQUIREMENTS.—

"(A) SAFETY AND DRUG ENFORCEMENT.—The Secretary shall not approve a State plan unless the plan provides that the estimated aggregate expenditure of funds of the State and its political subdivisions for commercial motor vehicle safety (including commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), exclusive of Federal funds and State matching funds required to receive Federal funding, will be maintained at a level that does not fall below the estimated average level of such aggregate expenditure for the State's previous three full fiscal years. In estimating such average level, the Secretary may allow the State to exclude State expenditures for federally sponsored demonstration or pilot projects.

"(B) WEIGHT.—The Secretary shall not approve a State plan unless the plan provides that the estimated aggregate expenditure of funds of the State and its political subdivisions for commercial motor vehicle size and weighing activities, exclusive of Federal funds, will be maintained at a level that does not fall below the estimated average level of such aggregate expenditure for the State's previous three full fiscal years. In order to be authorized to use funds under this section to enforce commercial motor vehicle size and weight requirements, a State in its State plan submitted under this subsection shall certify that such size and weight activities will be coupled with an appropriate form of commercial motor vehicle safety inspection and will be directly related to a specific commercial motor vehicle safety problem in that State, in particular that funds for size and weight enforcement activities will be—

"(i) conducted at locations other than fixed weight facilities;

"(ii) used to measure or weigh vehicles at specific geographical locations (such as steep grades or mountainous terrains), where the weight of a vehicle can significantly affect the safe operation of that vehicle; or

"(iii) used at sea ports of entry into and exit from the United States, with a focus on intermodal shipping containers.

"(C) TRAFFIC SAFETY ENFORCEMENT.—The Secretary shall not approve a State plan that provides for funds received under this section to be used to enforce traffic safety regulations applicable to commercial motor vehicles, unless the State certifies in the plan that such traffic safety enforcement will be coupled with an appropriate form of a commercial motor vehicle safety inspection.

"(D) MAINTENANCE OF EFFORT.—The Secretary shall not approve any plan under this section which does not provide that the estimated aggregate expenditure of funds of the State and its political subdivisions, exclusive of Federal funds and State matching

funds required to receive Federal funding, for commercial motor vehicle safety programs, including an estimate of expenditure for traffic enforcement activities that were coupled with commercial motor vehicle safety inspections, will be maintained at a level which does not fall below the estimated average level of such expenditure for the State's previous three full fiscal years. In estimating such average level, the Secretary may allow the State to exclude State expenditures for federally sponsored demonstration or pilot programs.

"(3) CONTINUING EVALUATION; WITHDRAWAL OF APPROVAL; JUDICIAL REVIEW.—

"(A) EVALUATION.—The Secretary shall make a continuing evaluation of the manner in which each State is carrying out its State plan, based upon reports submitted by the State motor vehicle safety agency and upon the Secretary's own inspection. A written statement of the evaluation shall be prepared every three years, the first of which shall be completed within three years after the date of enactment of this section.

"(B) WITHDRAWAL OF APPROVAL.—After providing a State with notice and an opportunity to comment, whenever the Secretary finds that a State plan is not being followed, or has become inadequate to ensure the enforcement of—

"(i) Federal rules, regulations, standards, or orders applicable to commercial motor vehicle safety (including vehicle size and weight requirements and commercial motor vehicle alcohol and controlled substances awareness and enforcement, including interdiction of illegal shipments), or compatible State rules, regulations, standards, and orders, and

"(ii) State or local traffic safety laws and regulations applicable to commercial motor vehicles,

the Secretary shall notify the State that approval of the State plan is being withdrawn and shall specify the Secretary's reasons for such withdrawal. The plan shall cease to be an approved plan upon receipt by the State of the notice of withdrawal, and the Secretary shall permit the State to modify and resubmit the plan in accordance with this subsection.

"(C) JUDICIAL REVIEW.—A State may seek judicial review of notice of withdrawal of approval, pursuant to chapter 7 of title 5, United States Code, in the appropriate United States Court of Appeals. The State may retain jurisdiction in any administrative or judicial enforcement proceeding commenced before the withdrawal of the approval of the State plan, if the issues involved do not directly relate to the reasons for the withdrawal of approval.

"(4) COORDINATION OF SAFETY PLANS.—The State motor vehicle safety agency shall coordinate the plan prepared under this subsection, with the highway safety plan developed under section 402 of this title. Such coordination shall include consultation with the Governor's Highway Safety Representative and representatives of affected industries to promote effective implementation of the purposes of this section.

"(c) FEDERAL SHARE OF COSTS.—By grants authorized under this section, the Secretary shall reimburse a State an amount not to exceed 80 percent of the costs incurred by that State in the development or implementation, or both, of programs as described under subsection (a). In determining such costs incurred by the State, the Secretary shall include in-kind contributions by the State.

"(d) ALLOCATIONS.—

"(1) DEDUCTION FOR ADMINISTRATION.—On October 1 of each fiscal year, or as soon thereafter as is practicable, the Secretary may deduct, for administration of this section for that fiscal year, not to exceed 1.25 percent of the funds available for that fiscal year. At least 75 percent of the funds so deducted for administration shall be used for the training of non-Federal employees, and the development of related training materials, to carry out the purposes of this section.

"(2) ALLOCATION CRITERIA.—On October 1 of each fiscal year, or as soon thereafter as is practicable, the Secretary, after making the deduction authorized by paragraph (1), shall allocate, among the States with plans approved under subsection (b), the available funds for that fiscal year, pursuant to criteria established by the Secretary; except that the Secretary, in allocating funds available for research, development, and demonstration under subsection (h)(3) or for public education under subsection (h)(4), may designate specific eligible States among which to allocate such funds.

"(e) AVAILABILITY, RELEASE, AND REALLOCATION OF FUNDS.—Funds made available to carry out this section shall remain available for obligation by the Secretary until expended. Allocations to a State shall remain available for expenditure in that State for the fiscal year in which they are allocated and one succeeding fiscal year. Funds not expended by a State during those two fiscal years shall be released to the Secretary for reallocation. Funds made available under part A of title IV of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2301 et seq.) which, as of October 1, 1992, were not obligated shall be available for reallocation and obligation under this section.

"(f) OBLIGATION OF FUNDS.—Approval by the Secretary of a grant to a State under this section shall be deemed a contractual obligation of the United States for payment of the Federal share of the costs incurred by that State in development or implementation, or both, of programs as described under subsection (a).

"(g) PAYMENTS TO STATES.—The Secretary shall make payments to a State of costs incurred by it under this section, as reflected by vouchers submitted by the State. Payments shall not exceed the Federal share of costs incurred as of the date of the vouchers.

"(h) FUNDING.—

"(1) AVAILABILITY.—To incur obligations to carry out the purposes of this section, there shall be available to the Secretary out of the Highway Trust Fund (other than the Mass Transit Account) not to exceed $70,000,000 for fiscal year 1993, $75,000,000 for fiscal year 1994, $80,000,000 for fiscal year 1995, and $85,000,000 for fiscal year 1996.

"(2) ENFORCEMENT.—Of funds made available under this subsection for any fiscal year, not less than $7,500,000 each year shall be used to pay for traffic enforcement activities focused exclusively upon commercial motor vehicle drivers, if such activities are coupled with an appropriate type of inspection for compliance with the commercial motor vehicle safety regulations. Of the funds made available under this subsection for each of fiscal years 1993 and 1994, not less than $1,500,000 shall be used to increase enforcement of the licensing requirements of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.) by Motor Carrier Safety Assistance Program officers and employees, specifically including the cost of purchasing equipment for and conducting inspections to check the current status of licenses issued pursuant to that Act.

"(3) RESEARCH AND DEVELOPMENT.—Not less than $500,000 but not more than $2,000,000 of the funds made available under this subsection for any fiscal year shall be available for research, development, and demonstration of technologies, methodologies, analyses, or information systems designed to promote the purposes of this section and which are beneficial to all jurisdictions. Such funds shall be announced publicly and awarded competitively, whenever practicable, to any of the eligible States for up to 100 percent of the State costs, or to other persons as determined by the Secretary. The development of the model program and procedures required under section 6 of the Motor Carrier Safety Assistance Program Reauthorization Act of 1991 shall be funded under this paragraph.

"(4) PUBLIC EDUCATION.—Not less than $350,000 of the funds made available under this subsection for any fiscal year shall be allocated among specified eligible States to help educate the motoring public on how to share the road safely with commercial motor vehicles. In carrying out such education activities, the States shall consult with appropriate industry representatives.

"(i) DEFINITIONS.—As used in this section, the term—

"(1) 'commerce' means—

"(A) trade, traffic, and transportation within the jurisdiction of the United States between a place in a State and a place outside of such State (including a place outside the United States); and

"(B) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in subparagraph (A).

"(2) 'commercial motor vehicle' means any self-propelled or towed vehicle used on highways in commerce to transport passengers or property—

"(A) if the vehicle has a gross vehicle weight rating of 10,001 or more pounds;

"(B) if the vehicle is designed to transport more than 15 passengers, including the driver; or

"(C) if the vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.) and are transported in a quantity requiring placarding under regulations issued by the Secretary under that Act.

"(3) 'controlled substance' has the meaning such term has under section 102(b) of the Controlled Substances Act (21 U.S.C. 802(b)).

"(4) 'State' means any one of the 50 States, the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, or the Virgin Islands.".

(b) AMENDMENT TO SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982.—

(1) ELIGIBLE EXPENDITURES.—Section 402 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302) is amended by adding at the end the following new subsection:

"(e) After the date of enactment of this subsection, a State with a plan approved under subsection (b)(1) of this section may be reimbursed by the Secretary under this part for expenditures in enforcing State or local traffic laws or regulations designed to promote the safe operation and driving of commercial motor vehicles, or for activities described under section 411(b)(2)(I) and (J) of title 23, United States Code, or both.".

(2) FUNDING.—Section 404(a)(2) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304(a)(2)) is amended—

(A) by striking "1988 and" and inserting in lieu thereof "1988,"; and

(B) by inserting immediately before the period at the end the following: ", and $65,000,000 per fiscal year for fiscal year 1992".

(c) CONFORMING AMENDMENT.—The analysis of chapter 4 of title 23, United States Code, is amended by adding at the end the following new item:

"412. Motor carrier safety assistance program."

SEC. 233. NEW FORMULA FOR ALLOCATION OF MCSAP FUNDS.

Within 6 months after the date of enactment of this Act, the Secretary of Transportation by regulation shall develop an improved formula and processes for the allocation among eligible States of the funds made available under the Motor Carrier Safety Assistance Program. In conducting such a revision, the Secretary shall take into account ways to provide incentives to States that demonstrate innovative, successful, cost-efficient, or cost-effective programs to promote commercial motor vehicle safety and hazardous materials transportation safety, including traffic safety enforcement and size and weight enforcement activities that are coupled with motor carrier safety inspections; to increase compatibility of State commercial motor vehicle safety and hazardous materials transportation regulations with the Federal safety regulations; and to promote other factors intended to promote effectiveness and efficiency that the Secretary determines appropriate.

SEC. 234. VIOLATIONS OF OUT-OF-SERVICE ORDERS.

(a) FEDERAL REGULATIONS.—Section 12008 of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2707) is amended by adding at the end the following new subsection:

"(g) VIOLATION OF OUT-OF-SERVICE ORDERS.—

"(1) REGULATIONS.—The Secretary shall issue regulations establishing sanctions and penalties relating to violations of out-of-service orders by persons operating commercial motor vehicles.

"(2) MINIMUM REQUIREMENTS.—Regulations issued under paragraph (1) shall, at a minimum, require that—

"(A) any operator of a commercial motor vehicle who is found to have committed a first violation of an out-of-service order shall be disqualified from operating such a vehicle for a period of not less than 90 days and shall be subject to a civil penalty of not less than $1,000;

"(B) any operator of a commercial motor vehicle who is found to have committed a second violation of an out-of-service order shall be disqualified from operating such a vehicle for a period of not less than 1 year and not more than 5 years and shall be subject to a civil penalty of not less than $1,000; and

"(C) any employer that knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall be subject to a civil penalty of not more than $10,000.

"(3) DEADLINES.—The regulations required under paragraph (1) shall be developed pursuant to a rulemaking proceeding initiated within 60 days after the date of enactment of this subsection and shall be issued not later than 12 months after such date of enactment.".

(b) STATE REGULATIONS.—Section 12009(a)(21) of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2708(a)(21)) is amended by inserting "and (g)(1)" immediately before the period at the end.

SEC. 235. INTRASTATE COMPATIBILITY.

Within 9 months after the date of enactment of this Act, the Secretary of Transportation shall issue final regulations specifying tolerance guidelines and standards for ensuring compatibility of intrastate commercial motor vehicle safety law and regulations with the Federal motor carrier safety regulations under the Motor Carrier Safety Assistance Program. Such guidelines and standards shall, to the extent practicable, allow for maximum flexibility while ensuring the degree of uniformity that will not diminish transportation safety. In the review of State plans and the allocation or granting of funds under section 411 of title 23, United States Code, as added by this part, the Secretary shall ensure that such guidelines and standards are applied uniformly.

SEC. 236. ENFORCEMENT OF BLOOD ALCOHOL CONCENTRATION LIMITS.

Within 3 months after the date of enactment of this Act, the Secretary of Transportation shall consult with representatives of law enforcement organizations and affected industries, and develop within 12 months after such date of enactment a model program and procedures for Motor Carrier Safety Assistance Program officers and employees to enforce the .04 percent blood alcohol concentration limit established by regulation pursuant to the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.).

SEC. 237. FHWA POSITIONS.

To help implement the purposes of this part, the Secretary of Transportation in fiscal year 1992 shall employ and maintain thereafter two additional positions at the headquarters of the Federal Highway Administration in excess of the number of employees authorized for fiscal year 1991 for the Federal Highway Administration.

SEC. 238. DRUG FREE TRUCK STOPS.

(a) SHORT TITLE.—This section may be cited as the "Drug Free Truck Stop Act".

(b) FINDINGS.—The Congress finds that—

(1) the illegal use of controlled substances by operators of commercial motor vehicles represents an enormous threat to the safety of all motorists and their passengers on the Nation's roadways; and

(2) as indicated by numerous studies, congressional hearings, and investigations, individuals often use the areas surrounding roadside truckstops and roadside rest areas as sites for the distribution of these controlled substances to the operators of commercial motor vehicles.

(c) AMENDMENT TO CONTROLLED SUBSTANCES ACT.—

(1) IN GENERAL.—In light of the findings in subsection (b), part D of the Controlled Substances Act (21 U.S.C. 801 et seq.) is amended by inserting immediately after section 408 the following new section:

"TRANSPORTATION SAFETY OFFENSES

"SEC. 409. (a) Any person who violates section 401(a)(1) or section 416 by distributing or possessing with intent to distribute a controlled substance in or on, or within one thousand feet of, a truck stop or safety rest area is (except as provided in subsection (b)) subject to—

"(1) twice the maximum punishment authorized by section 401(b); and

"(2) at least twice any term of supervised release authorized by section 401(b) for a first offense.

Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

"(b) Any person who violates section 401(a)(1) or section 416 by distributing or possessing with intent to distribute a controlled substance in or on, or within one thousand feet of, a truck stop or a safety rest area after a prior conviction or convictions under subsection (a) have become final is punishable—

"(1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) three times the maximum punishment authorized by section 401(b); and

"(2) at least three times any term of supervised release authorized by section 401(b) for a first offense.

"(c) In the case of any sentence imposed under subsection (b), imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under subsection (b) shall not be eligible for parole under chapter 311 of title 18 of the United States Code until the individual has served the minimum sentence required by such subsection.

"(d) For purposes of this section—

"(1) the term 'safety rest area' has the meaning given that term in part 752 of title 23, Code of Federal Regulations, as in effect on the date of enactment of this section; and

"(2) the term 'truck stop' means any facility (including any parking lot appurtenant thereto) that has the capacity to provide fuel or service, or both, to any commercial motor vehicle as defined under section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986, operating in commerce as defined in section 12019(3) of such Act and that is located adjacent to or within 2,500 feet of the Interstate and Defense System or the Federal-Aid Primary System.".

(2) CONFORMING AMENDMENTS.—

(A) CROSS REFERENCE.—Section 401(b) of such Act (21 U.S.C. 841(b)) is amended by inserting "409," immediately before "418," each place it appears.

(B) TABLE OF CONTENTS.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting, immediately after the item relating to section 408, the following:

"Sec. 409. Transportation safety offenses.".

(d) SENTENCING GUIDELINES.—

(1) PROMULGATION OF GUIDELINES.—Pursuant to its authority under section 994 of title 28, United States Code, and section 21 of the Sentencing Act of 1987 (28 U.S.C. 994 note), the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant convicted of violating section 409 of the Controlled Substances Act, as added by subsection (c), shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

(A) two levels greater than the level that would have been assigned for the underlying controlled substance offense; and

(B) in no event less than level 26.

(2) IMPLEMENTATION BY SENTENCING COMMISSION.—If the sentencing guidelines are amended after the date of enactment of this Act, the Sentencing Commission shall implement the instruction set forth in paragraph (1) so as to achieve a comparable result.

(3) LIMITATION.—The guidelines referred to in paragraph (2), as promulgated or amended under such paragraph, shall provide that an offense that could be subject to multiple en-

hancements pursuant to such paragraph is subject to not more than one such enhancement.

SEC. 239. IMPROVED BRAKE SYSTEMS FOR COMMERCIAL MOTOR VEHICLES.

(a) RULEMAKING PROCEEDING.—Section 9107 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (Public Law 100-690, subtitle B of title IX; 102 Stat. 4530) is amended—

(1) by striking "REPORT ON" in the heading;

(2) by inserting "(a) REPORT.—" immediately before "Not later than"; and

(3) by adding at the end the following new subsection:

"(b) RULEMAKING PROCEEDING.—The Secretary shall initiate a rulemaking proceeding not later than July 1, 1991. Such proceeding shall concern the need to adopt methods for improving braking performance standards for commercial motor vehicles and shall include an examination of antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. Any rule which the Secretary determines to issue as a result of such proceeding regarding improved brake performance shall take into account the necessity for effective enforcement of such a rule. The Secretary shall conclude the proceeding required by this subsection not later than April 1, 1992.".

(b) CONFORMING AMENDMENT.—The table of contents contained in section 9101(b) of the Truck and Bus Safety and Regulatory Reform Act of 1988 (102 Stat. 4527) is amended by striking "Report on improved" in the item relating to section 9107 and inserting in lieu thereof "Improved".

SEC. 240. COMPLIANCE REVIEW PRIORITY.

If the Secretary of Transportation identifies a pattern of violations of State or local traffic safety laws or regulations, or commercial motor vehicle safety rules, regulations, standards, or orders, among the drivers of commercial motor vehicles employed by a particular motor carrier, the Secretary or a State representative shall ensure that such motor carrier receives a high priority for a compliance review.

SEC. 241. REPORT ON TRAINING OF DRIVERS.

Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall report to Congress on the effectiveness of the efforts of the private sector to ensure adequate training of entry level drivers of commercial motor vehicles. The report shall include recommendations of the Secretary on the feasibility, desirability, and cost effectiveness of establishing mandatory Federal training requirements for all such entry level drivers. In preparing the report, the Secretary shall solicit the views of interested persons.

PART C—TRANSPORTATION EMPLOYEE TESTING

SEC. 261. SHORT TITLE.

This part may be cited as the "Omnibus Transportation Employee Testing Act of 1991".

SEC. 262. FINDINGS.

The Congress finds that—

(1) alcohol abuse and illegal drug use pose significant dangers to the safety and welfare of the Nation;

(2) millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses, and depend on the operators of aircraft, trains, trucks, and buses to perform in a safe and responsible manner;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on duty or off duty, by those individuals who are involved in the operation of aircraft, trains, trucks, and buses;

(4) the use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has been proven to have been a critical factor in transportation accidents;

(5) the testing of uniformed personnel of the Armed Forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing;

(6) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right of privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

SEC. 263. TESTING TO ENHANCE AVIATION SAFETY.

(a) IN GENERAL.—Title VI of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421 et seq.) is amended by adding at the end thereof the following:

"SEC. 614. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) TESTING PROGRAM.—

"(1) PROGRAM FOR EMPLOYEES OF CARRIERS.—The Administrator shall, in the interest of aviation safety, prescribe regulations within 12 months after the date of enactment of this section. Such regulations shall establish a program which requires air carriers and foreign air carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as determined by the Administrator) for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

"(2) PROGRAM FOR FAA EMPLOYEES.—The Administrator shall establish a program applicable to employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions. Such program shall provide for preemployment, reasonable suspicion, random, and post-accident testing for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Administrator may also prescribe regulations, as the Administrator considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

"(3) SUSPENSION; REVOCATION; DISQUALIFICATION; DISMISSAL.—In prescribing regulations under the programs required by this subsection, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to such an individual, or the disqualification or dismissal of any such individual, in accordance with the provisions of this section, in any instance where a test conducted and confirmed under this section indicates that such individual has used, in violation of law or Federal regulation, alcohol or a controlled substance.

"(b) PROHIBITION ON SERVICE.—

"(1) PROHIBITED ACT.—It is unlawful for a person to use, in violation of law or Federal regulation, alcohol or a controlled substance after the date of enactment of this section and serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(2) EFFECT OF REHABILITATION.—No individual who is determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance after the date of enactment of this section shall serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(3) PERFORMANCE OF PRIOR DUTIES PROHIBITED.—Any such individual determined by the Administrator to have used, in violation of law or Federal regulation, alcohol or a controlled substance after the date of enactment of this section who—

"(A) engaged in such use while on duty;

"(B) prior to such use had undertaken or completed a rehabilitation program described in subsection (c);

"(C) following such determination refuses to undertake such a rehabilitation program; or

"(D) following such determination fails to complete such a rehabilitation program,

shall not be permitted to perform the duties relating to air transportation which such individual performed prior to the date of such determination.

"(c) PROGRAM FOR REHABILITATION.—

"(1) PROGRAM FOR EMPLOYEES OF CARRIERS.—The Administrator shall prescribe regulations setting forth requirements for rehabilitation programs which at a minimum provide for the identification and opportunity for treatment of employees referred to in subsection (a)(1) in need of assistance in resolving problems with the use, in violation of law or Federal regulation, of alcohol or controlled substances. Each air carrier and foreign air carrier is encouraged to make such a program available to all of its employees in addition to those employees referred to in subsection (a)(1). The Administrator shall determine the circumstances under which such employees shall be required to participate in such a program. Nothing in this subsection shall preclude any air carrier or foreign air carrier from establishing a program under this subsection in cooperation with any other air carrier or foreign air carrier.

"(2) PROGRAM FOR FAA EMPLOYEES.—The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

"(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a), the Administrator shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures for controlled substances, in-

corporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

"(B) establish the minimum list of controlled substances for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

"(3) require that all laboratories involved in the controlled substances testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within 3 days after being advised of the results of the confirmation test;

"(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

"(7) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—

"(1) STATE AND LOCAL LAW AND REGULATIONS.—No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to employees of an air carrier or foreign air carrier, or to the general public.

"(2) OTHER REGULATIONS ISSUED BY ADMINISTRATOR.—Nothing in this section shall be construed to restrict the discretion of the Administrator to continue in force, amend, or further supplement any regulations issued before the date of enactment of this section that govern the use of alcohol and controlled substances by airmen, crewmembers, airport security screening contract personnel, air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), or employees of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(3) INTERNATIONAL OBLIGATIONS.—In prescribing regulations under this section, the Administrator shall only establish requirements applicable to foreign air carriers that are consistent with the international obligations of the United States, and the Administrator shall take into consideration any applicable laws and regulations of foreign countries. The Secretary of State and the Secretary of Transportation, jointly, shall call on the member countries of the International Civil Aviation Organization to strengthen and enforce existing standards to prohibit the use, in violation of law or Federal regulation, of alcohol or a controlled substance by crew members in international civil aviation.

"(f) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Administrator.".

(b) CONFORMING AMENDMENT.—That portion of the table of contents of the Federal Aviation Act of 1958 relating to title VI is amended by adding at the end the following:

"Sec. 614. Alcohol and controlled substances testing.
"(a) Testing program.
"(b) Prohibition on service.
"(c) Program for rehabilitation.
"(d) Procedures.
"(e) Effect on other laws and regulations.
"(f) Definition.".

SEC. 264. TESTING TO ENHANCE RAILROAD SAFETY.

Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end the following:

"(r)(1) In the interest of safety, the Secretary shall, within twelve months after the date of enactment of this subsection, issue rules, regulations, standards, and orders relating to alcohol and drug use in railroad operations. Such regulations shall establish a program which—

"(A) requires railroads to conduct preemployment, reasonable suspicion, random, and post-accident testing of all railroad employees responsible for safety-sensitive functions (as determined by the Secretary) for use, in violation of law or Federal regulation, of alcohol or a controlled substance;

"(B) requires, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used or to have been impaired by alcohol while on duty; and

"(C) requires, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law and any rules, regulations, standards, or orders issued under this title.

The Secretary may also issue rules, regulations, standards, and orders, as the Secretary considers appropriate in the interest of safety, requiring railroads to conduct periodic recurring testing of railroad employees responsible for such safety sensitive functions, for use of alcohol or a controlled substance in violation of law or Federal regulation. Nothing in this subsection shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any rules, regulations, standards, and orders governing the use of alcohol and controlled substances in railroad operations issued before the date of enactment of this subsection.

"(2) In carrying out the provisions of this subsection, the Secretary shall develop requirements which shall—

"(A) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(B) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(i) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this subsection, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

"(ii) establish the minimum list of controlled substances for which individuals may be tested; and

"(iii) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this subsection;

"(C) require that all laboratories involved in the controlled substances testing of any employee under this subsection shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(D) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any employee shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(E) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within 3 days after being advised of the results of the confirmation test;

"(F) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

"(G) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that

the provisions of this subparagraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this subsection; and

"(H) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(3) The Secretary shall issue rules, regulations, standards, or orders setting forth requirements for rehabilitation programs which at a minimum provide for the identification and opportunity for treatment of railroad employees responsible for safety-sensitive functions (as determined by the Secretary) in need of assistance in resolving problems with the use, in violation of law or Federal regulation, of alcohol or a controlled substance. Each railroad is encouraged to make such a program available to all of its employees in addition to those employees responsible for safety sensitive functions. The Secretary shall determine the circumstances under which such employees shall be required to participate in such program. Nothing in this paragraph shall preclude a railroad from establishing a program under this paragraph in cooperation with any other railroad.

"(4) In carrying out the provisions of this subsection, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

"(5) For the purposes of this subsection, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Secretary.".

SEC. 265. TESTING TO ENHANCE MOTOR CARRIER SAFETY.

(a) AMENDMENT TO COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986.—

(1) IN GENERAL.—The Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.) is amended by adding at the end the following new section:

"SEC. 12020. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) REGULATIONS.—The Secretary shall, in the interest of commercial motor vehicle safety, issue regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires motor carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of the operators of commercial motor vehicles for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Secretary may also issue regulations, as the Secretary considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such operators for such use in violation of law or Federal regulation.

"(b) TESTING.—

"(1) POST-ACCIDENT TESTING.—In issuing such regulations, the Secretary shall require that post-accident testing of the operator of a commercial motor vehicle be conducted in the case of any accident involving a commercial motor vehicle in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

"(2) TESTING AS PART OF MEDICAL EXAMINATION.—Nothing in subsection (a) of this section shall preclude the Secretary from providing in such regulations that such testing be conducted as part of the medical examination required by subpart E of part 391 of title 49, Code of Federal Regulations, with respect to those operators of commercial motor vehicles to whom such part is applicable.

"(c) PROGRAM FOR REHABILITATION.—The Secretary shall issue regulations setting forth requirements for rehabilitation programs which provide for the identification and opportunity for treatment of operators of commercial motor vehicles who are determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such operators shall be required to participate in such program. Nothing in this subsection shall preclude a motor carrier from establishing a program under this subsection in cooperation with any other motor carrier.

"(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a) of this section, the Secretary shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

"(B) establish the minimum list of controlled substances for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

"(3) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within 3 days after being advised of the results of the confirmation test;

"(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

"(7) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—

"(1) STATE AND LOCAL LAW AND REGULATIONS.—No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations issued under this section, except that the regulations issued under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to commercial motor vehicle employees, or to the general public.

"(2) OTHER REGULATIONS ISSUED BY SECRETARY.—Nothing in this section shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any regulations governing the use of alcohol or controlled substances by commercial motor vehicle employees issued before the date of enactment of this section.

"(3) INTERNATIONAL OBLIGATIONS.—In issuing regulations under this section, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

"(f) APPLICATION OF PENALTIES.—

"(1) EFFECT ON OTHER PENALTIES.—Nothing in this section shall be construed to supersede any penalty applicable to the operator of a commercial motor vehicle under this title or any other provision of law.

"(2) DETERMINATION OF SANCTIONS.—The Secretary shall determine appropriate sanctions for commercial motor vehicle operators who are determined, as a result of tests conducted and confirmed under this section, to have used, in violation of law or Federal regulation, alcohol or a controlled substance but are not under the influence of alcohol or a controlled substance, as provided in this title.

"(g) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) specified by the Secretary.".

(2) CONFORMING AMENDMENT.—The table of contents of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end thereof the following:

"Sec. 12020. Alcohol and controlled substances testing.".

(b) PILOT TEST PROGRAM.—

(1) DESIGN AND IMPLEMENTATION.—The Secretary shall design within nine months after the date of enactment of this Act, and implement within 15 months after the date of enactment of this Act, a pilot test program for the purpose of testing the operators of commercial motor vehicles on a random basis to determine whether an operator has used, in violation of law or Federal regulation, alcohol or a controlled substance. The pilot test

program shall be administered as part of the Motor Carrier Safety Assistance Program.

(2) SOLICITATION.—The Secretary shall solicit the participation of States which are interested in participating in such program and shall select four States to participate in the program.

(3) SELECTION.—The Secretary shall ensure that the States selected pursuant to this subsection are representative of varying geographical and population characteristics of the Nation and that the selection takes into consideration the historical geographical incidence of commercial motor vehicle accidents involving loss of human life.

(4) DURATION; ALTERNATIVE METHODOLOGIES.—The pilot program authorized by this subsection shall continue for a period of one year. The Secretary shall consider alternative methodologies for implementing a system of random testing of operators of commercial motor vehicles.

(5) REPORT.—Not later than 30 months after the date of enactment of this Act, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the results of the pilot program conducted under this subsection. Such report shall include any recommendations of the Secretary concerning the desirability and implementation of a system for the random testing of operators of commercial motor vehicles.

(6) FUNDING.—For purposes of carrying out this subsection, there shall be available to the Secretary, $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) for fiscal year 1992.

(7) DEFINITION.—For purposes of this subsection, the term "commercial motor vehicle" shall have the meaning given to such term in section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2716(6)).

SEC. 266. TESTING TO ENHANCE MASS TRANSPORTATION SAFETY.

(a) DEFINITIONS.—As used in this section, the term—

(1) "controlled substance" means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary has determined has a risk to transportation safety;

(2) "person" includes any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States, or any State, territory, district, or possession thereof, or of any foreign country; and

(3) "mass transportation" means all forms of mass transportation except those forms that the Secretary determines are covered adequately, for purposes of employee drug and alcohol testing, by either the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) or the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.).

(b) TESTING PROGRAMS.—

(1) IN GENERAL.—The Secretary shall, in the interest of mass transportation safety, issue regulations within 12 months after the date of enactment of this Act. Such regulations shall establish a program which requires mass transportation operations which are recipients of Federal financial assistance under section 3, 9, or 18 of the Urban Mass Transportation Act of 1964 (49 App. U.S.C. 1602, 1607a, or 1614) or section 103(e)(4) of title 23, United States Code, to conduct preemployment, reasonable suspicion, random, and post-accident testing of mass transportation employees responsible for safety-sensitive functions (as determined by the Secretary) for use, in violation of law or Federal regulation, of alcohol or a controlled substance. The Secretary may also issue regulations, as the Secretary considers appropriate in the interest of safety, for the conduct of periodic recurring testing of such employees for such use in violation of law or Federal regulation.

(2) POST-ACCIDENT TESTING.—In issuing such regulations, the Secretary shall require that post-accident testing of such a mass transportation employee be conducted in the case of any accident involving mass transportation in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

(c) REHABILITATION PROGRAMS.—The Secretary shall issue regulations setting forth requirements for rehabilitation programs which provide for the identification and opportunity for treatment of mass transportation employees referred to in subsection (b)(1) who are determined to have used, in violation of law or Federal regulation, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such employees shall be required to participate in such program. Nothing in this subsection shall preclude a mass transportation operation from establishing a program under this section in cooperation with any other such operation.

(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (b), the Secretary shall develop requirements which shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

(2) with respect to laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any subsequent amendments thereto, including mandatory guidelines which—

(A) establish comprehensive standards for all aspects of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimen samples collected for controlled substances testing;

(B) establish the minimum list of controlled substances for which individuals may be tested; and

(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

(4) provide that all tests which indicate the use, in violation of law or Federal regulation, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

(5) provide that each specimen sample be subdivided, secured, and labelled in the presence of the tested individual and that a portion thereof be retained in a secure manner to prevent the possibility of tampering, so that in the event the individual's confirmation test results are positive the individual has an opportunity to have the retained portion assayed by a confirmation test done independently at a second certified laboratory if the individual requests the independent test within three days after being advised of the results of the confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations as may be necessary and in consultation with the Department of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(e) EFFECT ON OTHER LAWS AND REGULATIONS.—

(1) STATE AND LOCAL LAW AND REGULATIONS.—No State or local government shall adopt or have in effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations issued under this section, except that the regulations issued under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to mass transportation employees, or to the general public.

(2) OTHER REGULATION ISSUED BY SECRETARY.—Nothing in this section shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any regulations governing the use of alcohol or controlled substances by mass transportation employees issued before the date of enactment of this Act.

(3) INTERNATIONAL OBLIGATIONS.—In issuing regulations under this section, the Secretary shall only establish requirements that are consistent with the international obligations of the United States, and the Secretary shall take into consideration any applicable laws and regulations of foreign countries.

(f) PENALTIES.—

(1) DISQUALIFICATION.—As the Secretary considers appropriate, the Secretary shall require—

(A) disqualification for an established period of time or dismissal of any employee referred to in subsection (b)(1) who is determined to have used or to have been impaired by alcohol while on duty; and

(B) disqualification for an established period of time or dismissal of any such employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law or any regulations.

(2) EFFECT ON OTHER APPLICABLE PENALTIES.—Nothing in this section shall be construed to supersede any penalty applicable to a mass transportation employee under any other provision of law.

(g) INELIGIBILITY FOR FINANCIAL ASSISTANCE.—A person shall not be eligible for Federal financial assistance under section 3, 9, or 18 of the Urban Mass Transportation Act of 1964 (49 App. U.S.C. 1602, 1607a, or 1614) or

section 103(e)(4) of title 23, United States Code, if such person—

(1) is required, under regulations prescribed by the Secretary under this section, to establish a program of alcohol and controlled substances testing; and

(2) fails to establish such a program in accordance with such regulations.

PART D—GENERAL PROVISIONS

SEC. 271. RURAL TOURISM DEVELOPMENT.

(a) SHORT TITLE.—This section may be cited as the "Rural Tourism Development Act of 1991".

(b) RURAL TOURISM DEVELOPMENT FOUNDATION.—

(1) FINDINGS.—The Congress finds that increased efforts directed at the promotion of rural tourism will contribute to the economic development of rural America and further the conservation and promotion of natural, scenic, historic, scientific, educational, inspirational, or recreational resources for future generations of Americans and foreign visitors.

(2) ESTABLISHMENT OF FOUNDATION.—In order to assist the United States Travel and Tourism Administration in the development and promotion of rural tourism, there is established a charitable and nonprofit corporation to be known as the Rural Tourism Development Foundation (hereafter in this section referred to as the "Foundation").

(3) FUNCTIONS.—The functions of the Foundation shall be the planning, development, and implementation of projects and programs which have the potential to increase travel and tourism export revenues by attracting foreign visitors to rural America. Initially, such projects and programs shall include but not be limited to—

(A) participation in the development and distribution of educational and promotional materials pertaining to both private and public attractions located in rural areas of the United States, including Federal parks and recreational lands, which can be used by foreign visitors;

(B) development of educational resources to assist in private and public rural tourism development; and

(C) participation in Federal agency outreach efforts to make such resources available to private enterprises, State and local governments, and other persons and entities interested in rural tourism development.

(4) BOARD OF DIRECTORS.—

(A) ESTABLISHMENT.—

(i) COMPOSITION.—The Foundation shall have a Board of Directors (hereafter in this section referred to as the "Board") that—

(I) during its first two years shall consist of nine voting members; and

(II) thereafter shall consist of those nine members plus up to six additional voting members as determined in accordance with the bylaws of the Foundation.

(ii) APPOINTMENT.—

(I) The Under Secretary of Commerce for Travel and Tourism shall, within six months after the date of enactment of this Act, appoint the initial nine voting members of the Board and thereafter shall appoint the successors of each of three such members, as provided by such bylaws.

(II) The voting members of the Board, other than those referred to in subclause (I), shall be appointed in accordance with procedures established by such bylaws.

(iii) QUALIFICATIONS.—The voting members of the Board shall be individuals who are not Federal officers or employees and who have demonstrated an interest in rural tourism development. Of such voting members, at least a majority shall have experience and expertise in tourism trade promotion, at least one shall have experience and expertise in resource conservation, at least one shall have experience and expertise in financial administration in a fiduciary capacity, at least one shall be a representative of an Indian tribe who has experience and expertise in rural tourism on an Indian reservation, at least one shall represent a regional or national organization or association with a major interest in rural tourism development or promotion, and at least one shall be a representative of a State who is responsible for tourism promotion.

(iv) TERMS OF OFFICE.—Voting members of the Board shall each serve a term of six years, except that—

(I) initial terms shall be staggered to assure continuity of administration;

(II) if a person is appointed to fill a vacancy occurring prior to the expiration of the term of his or her predecessor, that person shall serve only for the remainder of the predecessor's term; and

(III) any such appointment to fill a vacancy shall be made within 60 days after the vacancy occurs.

(B) EX-OFFICIO MEMBERS.—The Under Secretary of Commerce for Travel and Tourism and representatives of Federal agencies with responsibility for Federal recreational sites in rural areas (including the National Park Service, Bureau of Land Management, Forest Service, Corps of Engineers, Bureau of Indian Affairs, Tennessee Valley Authority, and such other Federal agencies as the Board determines appropriate) shall be nonvoting ex-officio members of the Board.

(C) CHAIRMAN; VICE CHAIRMAN.—The Chairman and Vice Chairman of the Board shall be elected by the voting members of the Board for terms of two years.

(D) MEETINGS; QUORUM; OFFICIAL SEAL.—The Board shall meet at the call of the Chairman and there shall be at least two meetings each year. A majority of the voting members of the Board serving at any one time shall constitute a quorum for the transaction of business, and the Foundation shall have an official seal, which shall be judicially noticed. Voting membership on the Board shall not be deemed to be an office within the meaning of the laws of the United States.

(5) COMPENSATION AND EXPENSES.—No compensation shall be paid to the members of the Board for their services as members, but they may be reimbursed for actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties as such members out of Foundation funds available to the Board for such purposes.

(6) ACCEPTANCE OF GIFTS, DEVISES, AND BEQUESTS.—

(A) IN GENERAL.—The Foundation is authorized to accept, receive, solicit, hold, administer, and use any gifts, devises, or bequests, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein for the benefit of or in connection with rural tourism, except that the Foundation may not accept any such gift, devise, or bequest which entails any expenditure other than from the resources of the Foundation. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of rural tourism.

(B) GIFTS, DEVISES, AND BEQUESTS FOR BENEFIT OF INDIAN TRIBES.—A gift, devise, or bequest accepted by the Foundation for the benefit of or in connection with rural tourism on Indian reservations, pursuant to the Act of February 14, 1931 (25 U.S.C. 451), shall be maintained in a separate accounting for the benefit of Indian tribes in the development of tourism on Indian reservations.

(7) INVESTMENTS.—Except as otherwise required by the instrument of transfer, the Foundation may sell, lease, invest, reinvest, retain, or otherwise dispose of or deal with any property or income thereof as the Board may from time to time determine. The Foundation shall not engage in any business, nor shall the Foundation make any investment that may not lawfully be made by a trust company in the District of Columbia, except that the Foundation may make any investment authorized by the instrument of transfer and may retain any property accepted by the Foundation.

(8) USE OF FEDERAL SERVICES AND FACILITIES.—The Foundation may use the services and facilities of the Federal Government and such services and facilities may be made available on request to the extent practicable without reimbursement therefor.

(9) PERPETUAL SUCCESSION; LIABILITY OF BOARD MEMBERS.—The Foundation shall have perpetual succession, with all the usual powers and obligations of a corporation acting as a trustee, including the power to sue and to be sued in its own name, but the members of the Board shall not be personally liable, except for malfeasance.

(10) CONTRACTUAL POWER.—The Foundation shall have the power to enter into contracts, to execute instruments, and generally to do any and all lawful acts necessary or appropriate to its purposes.

(11) ADMINISTRATION.—

(A) IN GENERAL.—In carrying out the provisions of this section, the Board may adopt bylaws, rules, and regulations necessary for the administration of its functions and may hire officers and employees and contract for any other necessary services. Such officers and employees shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and may be paid without regard to the provisions of chapters 51 and 53 of such title relating to classification and General Schedule pay rates.

(B) VOLUNTARY AND UNCOMPENSATED SERVICES.—The Secretary of Commerce may accept the voluntary and uncompensated services of the Foundation, the Board, and the officers and employees of the Foundation in the performance of the functions authorized under this section, without regard to section 1342 of title 31, United States Code, or the civil service classification laws, rules, or regulations.

(C) TREATMENT AS FEDERAL EMPLOYEE.—Neither an officer or employee hired under subparagraph (A) nor an individual who provides services under subparagraph (B) shall be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code, relating to compensation for work injuries, and chapter 171 of title 28, United States Code, relating to tort claims.

(12) EXEMPTION FROM TAXES; CONTRIBUTIONS.—The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto. The Foundation may, however, in the discretion of the Board, contribute toward the costs of local government in amounts not in excess of those which it would be obligated to pay such government if it were not ex-

empt from taxation by virtue of this subsection or by virtue of its being a charitable and nonprofit corporation and may agree so to contribute with respect to property transferred to it and the income derived therefrom if such agreement is a condition of the transfer. Contributions, gifts, and other transfers made to or for the use of the Foundation shall be regarded as contributions, gifts, or transfers to or for the use of the United States.

(13) LIABILITY OF UNITED STATES.—The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation.

(14) ANNUAL REPORT.—The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to Congress an annual report of its proceedings and activities, including a full and complete statement of its receipts, expenditures, and investments.

(15) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce for each of fiscal years 1991, 1992, and 1993 not to exceed $500,000 to—

(A) match partially or wholly the amount or value of contributions (whether in currency, services, or property) made to the Rural Tourism Development Foundation by private persons and Federal, State, and local government agencies; and

(B) provide administrative services for the Rural Tourism Development Foundation.

(16) DEFINITIONS.—As used in this section, the term—

(A) "Indian reservation" has the meaning given the term "reservation" in section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d));

(B) "Indian tribe" has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e));

(C) "local government" has the meaning given that term in section 3371(2) of title 5, United States Code; and

(D) "rural tourism" means travel and tourism activities occurring outside of United States Standard Metropolitan Statistical Areas, including activities on Federal recreational sites, on Indian reservations, and in the territories, possessions, and commonwealths of the United States.

(17) ASSISTANCE BY SECRETARY OF COMMERCE.—Section 202(a) of the International Travel Act of 1961 (22 U.S.C. 2123(a)) is amended—

(A) by striking "and" at the end of paragraph (14);

(B) by striking the period at the end of paragraph (15) and inserting in lieu thereof "; and"; and

(C) by adding at the end the following new paragraph:

"(16) may assist the Rural Tourism Development Foundation, established under the Rural Tourism Development Act of 1991, in the development and promotion of rural tourism.".

SEC. 272. EDUCATION AND TRAINING PROGRAM.

Chapter 1 of title 23, United States Code, is amended by adding in an appropriate place the following new section:

"§ Education and Training Program

"(a) AUTHORITY.—The Secretary is authorized to carry out a transportation assistance program that will provide highway and transportation agencies, in (1) urbanized areas of 50,000 to 1,000,000 population and (2) rural areas, access to modern highway technology.

"(b) GRANTS AND CONTRACTS.—The Secretary may make grants and enter into direct contracts for education and training, technical assistance and related support service that will:

"(1) assist rural local transportation agencies to develop and expand their expertise in road and transportation areas, including pavement, bridge and safety management systems; improve roads and bridges; enhance programs for the movement of passengers and freight; and deal effectively with special road related problems by preparing and providing training packages, manuals, guidelines and technical resource materials; and a tourism and recreational travel technical assistance program;

"(2) identify, package and deliver usable highway technology to local jurisdictions to assist urban transportation agencies in developing and expanding their ability to deal effectively with road related problems; and

"(3) establish, in cooperation with State transportation or highway departments and universities (A) urban technical assistance program centers in States with two or more urbanized areas of 50,000 to 1,000,000 population and (B) rural technical assistance program centers: *Provided*, That not less than four centers shall be designated to provide transportation assistance that may include, but is not necessarily limited to, a 'circuit-rider' program, providing training on intergovernmental transportation planning and project selection, and tourism recreational travel to American Indian tribal governments.

"(c) FUNDS.—The funds required to carry out the provisions of this section shall be taken out of administrative funds authorized by section 104(a). The sum of $8,000,000 per fiscal year for each of the fiscal years 1992, 1993, 1994, 1995, and 1996 shall be set aside from such administrative funds for the purpose of providing technical and financial support for these centers, including up to 100 per centum for services provided to American Indian tribal governments. An additional sum of $5,000,000 for the fiscal year 1992 shall be set aside from such administrative funds to establish and carry out a tourism and recreational travel technical assistance program in non-urbanized areas. Funds to carry out this section shall remain available until expended.".

SEC. 273. COMMERCIAL DRIVERS LICENSE WAIVER.

In addition to the authority which the Department of Transportation granted to States to waive application of the Commercial Motor Vehicle Safety Act of 1986 with respect to farm vehicles contained in volume 53, pages 37313-37316, of the Federal Register (September 26, 1988), such States may extend such waivers to vehicles used to transport farm supplies from retail dealers to or from a farm, and to vehicles used for custom harvesting, and to vehicles used to transport livestock feed, whether or not such vehicles are controlled and operated by a farmer.

SEC. 274. BORDER CROSSING STUDY.

(a) The Secretary of Transportation shall conduct a review of current Federal highways that access border crossings between the United States and Canada in order to:

(1) determine whether or not they are in compliance with current Federal highway regulations and adequately designed for future growth and expansion;

(2) assess their ability to accommodate increased transfer of commerce due to the United States-Canada Free Trade Agreements; and

(3) assess their ability to accommodate increasing tourism-related traffic between the United States and Canada. The review shall specifically address issues related to the alignment of United States and Canadian highways at the border crossings, the development of bicycle paths and pedestrian walkways, potential energy savings to be realized by decreasing truck delays at the border crossings and related parking improvements.

(b) The Secretary shall issue a report of the findings of this review to the Senate Environment and Public Works Committee and the House Public Works Committee within 60 days after the date of enactment of this Act.

TITLE III—FEDERAL TRANSIT ACT OF 1991

SEC. 301. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Federal Transit Act of 1991".

(b) TABLE OF CONTENTS.—

SEC. 302. CHANGE OF AGENCY NAME.

(a) IN GENERAL.—The Urban Mass Transportation Administration is hereby redesignated as the "Federal Transit Administration".

(b) CONFORMING AMENDMENTS.—Titles 5 and 49, United States Code, are amended by striking "Urban Mass Transportation Administration" wherever it appears and inserting "Federal Transit Administration".

(c) OTHER REFERENCES.—Any reference in any other provision of law to the "Urban Mass Transportation Administration" shall be deemed to refer instead to the "Federal Transit Administration".

SEC. 303. AMENDMENT TO SHORT TITLE OF THE 1964 ACT.

(a) IN GENERAL.—The Urban Mass Transportation Act of 1964 is amended by striking the first section and inserting the following:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Federal Transit Act'.".

(b) OTHER REFERENCES.—Any reference in any other provision of law to the "Urban Mass Transportation Act of 1964" shall be deemed to refer instead to the "Federal Transit Act".

SEC. 304. FINDINGS AND PURPOSES.

(a) FINDINGS.—Section 2(a) of the Federal Transit Act (hereafter referred to in this Act as the "Act") (49 U.S.C. App. 1601(a)) is amended—

(1) in paragraph (2), by striking "and" after "basis";

(2) in paragraph (3), by striking the period and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(4) that significant improvements in public transportation are necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly persons, persons with disabilities, and economically disadvantaged persons in urban and rural areas of the country.".

(b) PURPOSES.—Section 2(b) of the Act (49 U.S.C. App. 1601(b)) is amended—

(1) in paragraph (2), by striking "and" after "private";

(2) in paragraph (3), by striking the period and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(4) to provide financial assistance to State and local governments and their instrumentalities to help implement national goals relating to mobility for elderly persons, persons with disabilities, and economically disadvantaged persons.".

SEC. 305. COMMUTE-TO-WORK BENEFITS.

(a) FINDINGS.—The Congress finds that—

(1) current Federal policy places commuter transit benefits at a disadvantage compared to drive-to-work benefits;

(2) this Federal policy is inconsistent with important national policy objectives, including the need to conserve energy, reduce reliance on energy imports, lessen congestion, and clean our Nation's air;

(3) commuter transit benefits should be part of a comprehensive solution to national transportation and air pollution problems;

(4) current Federal law allows employers to provide only up to $15 per month in employee benefits for transit or van pools;

(5) the current "cliff provision", which treats an entire commuter transit benefit as taxable income if it exceeds $15 per month, unduly penalizes the most effective employer efforts to change commuter behavior;

(6) employer-provided commuter transit incentives offer many public benefits, including increased access of low-income persons to good jobs, inexpensive reduction of roadway and parking congestion, and cost-effective incentives for timely arrival at work; and

(7) legislation to provide equitable treatment of employer-provided commuter transit benefits has been introduced with bipartisan support in both the Senate and House of Representatives.

(b) POLICY.—The Congress strongly supports Federal policy that promotes increased use of employer-provided commuter transit benefits. Such a policy "levels the playing field" between transportation modes and is consistent with important national objectives of energy conservation, reduced reliance on energy imports, lessened congestion, and clean air.

SEC. 306. CAPITAL GRANT OR LOAN PROGRAM.

The heading of section 3 of the Act (49 U.S.C. App. 1602) is amended by striking "discretionary" and inserting "capital".

SEC. 307. CAPITAL GRANTS; TECHNICAL AMENDMENT TO PROVIDE FOR EARLY SYSTEMS WORK CONTRACTS AND FULL FUNDING GRANT CONTRACTS.

Section 3(a)(4) of the Act (49 U.S.C. App. 1602(a)(4)) is amended—

(1) by inserting "(A)" after "(4)";

(2) in the fifth sentence, by inserting "not less than" after "complete";

(3) by adding after the fifth sentence the following:

"(B) The Secretary is authorized to enter into a full funding contract with the applicant, which contract shall—

"(i) establish the terms and conditions of Federal financial participation in a project under this section;

"(ii) establish the maximum amounts of Federal financial assistance for such project; and

"(iii) facilitate timely and efficient management of such project in accordance with Federal law.

"(C) A contract under subparagraph (B) shall obligate an amount of available budget authority specified in law and may include a commitment, contingent upon the future availability of budget authority, to obligate an additional amount or additional amounts from future available budget authority specified in law. The contract shall specify that the contingent commitment does not constitute an obligation of the United States. The future availability of budget authority referred to in the first sentence of this subparagraph shall be amounts specified in law in advance for commitments entered into under subparagraph (B). Any interest and other financing costs of efficiently carrying out the project or a portion thereof shall be considered as a cost of carrying out the project under a full funding contract, except that eligible costs shall not be greater than the costs of the most favorable financing terms reasonably available for the project at the time of borrowing. The total of amounts stipulated in a contract for a fixed guideway project shall be sufficient to complete not less than an operable segment.

"(D) The Secretary is authorized to enter into early systems work agreements with the applicant if a record of decision pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary determines there is reason to believe—

"(i) a full funding contract will be entered into for the project; and

"(ii) the terms of the early systems work agreement will promote ultimate completion of the project more rapidly and at less cost.

The early systems work agreement shall obligate an amount of available budget authority specified in law and shall provide for reimbursement of preliminary costs of project implementation, including land acquisition, timely procurement of system elements for which specifications are determined, and other activities that the Secretary determines to be appropriate to facilitate efficient, long-term project management. The interest and other financing costs of carrying out the early systems work agreement efficiently shall be considered as a cost of carrying out the agreement, except that eligible costs shall not be greater than the costs of the most favorable financing terms reasonably available for the project at the time of borrowing. If an applicant fails to implement the project for reasons within the applicant's control, the applicant shall repay all Federal payments made under the early systems work agreement plus such reasonable interest and penalty charges as the Secretary may establish in the agreement.";

(4) by inserting "(E)" before "The total estimated";

(5) in the sentence that begins "The total estimated"—

(A) by inserting "and contingent commitments to incur obligations," after "Federal obligations";

(B) by inserting "early systems work agreements and full funding grant contracts," after "all outstanding letters of intent,"; and

(C) by inserting "or 50 percent of the uncommitted cash balance remaining in the mass transit account of the Highway Trust Fund, including amounts received from taxes and interest earned in excess of amounts that have been previously obligated, whichever is greater" after "section 3 of this Act"; and

(6) in the sentence that begins "The total amount covered", by inserting "and contingent commitments included in early systems work agreements and full funding grant contracts" after "by new letters issued,".

SEC. 308. SECTION 3 PROGRAM—ALLOCATIONS.

Section 3(k)(1) of the Act (49 U.S.C. App. 1602(k)(1)) is amended to read as follows:

"(1) IN GENERAL.—Of the amounts available for grants and loans under this section for fiscal years 1992, 1993, 1994, 1995, and 1996—

"(A) 40 percent shall be available for rail modernization;

"(B) 40 percent shall be available for construction of new fixed guideway systems and extensions to fixed guideway systems; and

"(C) 20 percent shall be available for the replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities.".

SEC. 309. SECTION 3 PROGRAM—RAIL MODERNIZATION FORMULA.

Section 3(k) of the Act (49 U.S.C. App. 1602(k)) is amended by adding at the end the following:

"(3) RAIL MODERNIZATION FORMULA.—

"(A) HOLD HARMLESS FOR HISTORIC RAIL SYSTEMS.—

"(i) IN GENERAL.—Of the amounts available under paragraph (1)(A), the Secretary shall, in each of fiscal years 1992 through 1996, re-

serve for grants to historic rail systems $455,000,000 or the amount approved in an appropriations Act, whichever is less.

"(ii) SPECIFIC ALLOCATIONS.—The Secretary shall initially allocate—

"(I) 41 percent of the amount reserved in clause (i) to those two historic rail systems with shared responsibility for the operation and preservation of a regional commuter rail line that, taken together, would receive 49 percent under the apportionment formula specified in section 9(b)(2) if such formula was applied, solely for the historic rail systems, to the total amount available for allocation under this paragraph, with 14.63 percent of the amounts so allocated being reserved for the smaller of the two historic rail systems as measured by fixed guideway route miles; and

"(II) an amount equal to 2 percent of the amount reserved in clause (i) to that historic rail system that received funding for rail modernization under this section for only 2 of the 5 fiscal years 1986 through 1990.

"(iii) GENERAL ALLOCATIONS.—The Secretary shall allocate all amounts described in clause (i) that remain after making the allocations specified in clause (ii) so that each historic rail system, other than those specified under such clause, receives the higher of—

"(I) an amount that bears the same ratio to the total amount available for allocation under this subparagraph as the total amount of funding for rail modernization activities received during fiscal years 1984 through 1990 by that historic system bears to the total amount of funding for rail modernization received during fiscal years 1984 through 1990 by all historic rail systems, or

"(II) an amount that bears the same ratio to the total amount available for allocation under this subparagraph as the total amount of funding for rail modernization activities received during fiscal years 1988 through 1990 by that historic system bears to the total amount of funding for rail modernization received during fiscal years 1988 through 1990 by all historic rail systems.

The Secretary shall make such fair and equitable adjustments to the amounts received by historic rail systems under this clause as are necessary for the practicable administration of the program. Notwithstanding the allocations that would otherwise result under this clause, an historic rail system shall not receive less than the amount the system would receive if the apportionment formula specified under section 9(b)(2) were applied, solely for the historic rail systems, to the total amount available for allocation under this clause.

"(B) REMAINDER.—

"(i) INITIAL ALLOCATION.—After reserving amounts for historic rail systems as required by subparagraph (A), the Secretary shall allocate any amounts remaining available under paragraph (1)(A) that exceed the allocations made under subparagraph (A), but that do not exceed $525,000,000, as follows:

"(I) 50 percent shall be allocated among historic rail systems in accordance with the apportionment formula specified under section 9(b)(2); and

"(II) 50 percent shall be allocated among all other eligible systems in accordance with the apportionment formula specified under section 9(b)(2).

"(ii) SECOND ALLOCATION.—Any amounts available under paragraph (1)(A) in excess of the amounts allocated under subparagraph (A) and clause (i) of this subparagraph shall be made available to all eligible systems in accordance with the apportionment formula specified under section 9(b)(2).

"(C) APPORTIONMENT.—(i) On October 1 of each fiscal year, the Secretary shall apportion any amounts made available or authorized to be appropriated for that fiscal year (and any fiscal years remaining in the authorization period identified under paragraph (3)) among all eligible systems in accordance with the provisions of this paragraph. The Secretary shall publish apportionments of such authorized amounts on the apportionment date established by the preceding sentence.

"(ii) The Secretary shall apportion any amounts provided or approved for obligation in an appropriations Act to carry out paragraph (3)(A) for any fiscal year in accordance with the provisions of this paragraph not later than the 10th day following the date on which such funds were appropriated or October 1 of such fiscal year, whichever is later. The Secretary shall publish apportionments of such appropriated amounts on the apportionment date established by the preceding sentence.

"(D) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'historic rail system' includes those rail systems that (I) received funding for rail modernization under this section for at least 2 of the 5 fiscal years 1986 through 1990, and (II) receive in fiscal year 1991 at least 0.5 percent of the total amount of funding made available under section 9(b)(2); and

"(ii) the term 'eligible systems' shall include, for a given fiscal year, all historic rail systems and all other fixed guideway systems placed in revenue service more than 10 years prior to such fiscal year. The term 'eligible system' may include, for a given fiscal year, a fixed guideway system not eligible under the preceding sentence if such system, prior to the beginning of such fiscal year, demonstrates to the satisfaction of the Secretary that the system has modernization needs that cannot be met adequately with amounts received under section 9(b)(2) of this Act. A fixed guideway system shall be considered to be placed in revenue service for purposes of this clause if a minimum operable segment of such system was so placed.".

SEC. 310. SECTION 3 PROGRAM—LOCAL SHARE.

Section 4(a) of the Act is amended by inserting at the end the following new sentence: "The remainder so provided may include the cost of rolling stock previously purchased if the applicant demonstrates to the satisfaction of the Secretary that—

"(1) such purchase was made solely with non-Federal funds;

"(2) such purchase would not have been made except for use on a planned extension that is eligible for assistance under section 3; and

"(3) the rolling stock so purchased is to be used on the extension for which the Federal grant is being requested.".

SEC. 311. SECTION 3—GRANDFATHERED JURISDICTIONS.

Section 3(a)(4) of the Act (49 U.S.C. App. 1602(a)(4)), as amended by section 307 of this title, is amended by adding at the end the following subparagraph:

"(F) All existing letters of intent, full funding agreements and letters of commitment, issued prior to the enactment of the Federal Transit Act of 1991, shall be continued in force.".

SEC. 312. CAPITAL GRANTS—INNOVATIVE TECHNIQUES AND PRACTICES.

Section 3(a)(1) of the Act (49 U.S.C. App. 1602(a)(1)) is amended by inserting before the semicolon the following: ", including grants to States and local public bodies for projects for the deployment of innovative techniques and methods in the management and operation of public transportation services".

SEC. 313. CAPITAL GRANTS—ELDERLY PERSONS AND PERSONS WITH DISABILITIES.

Section 3(a)(1) of the Act (49 U.S.C. App. 1602(a)(1)) is amended by striking subparagraph (E) and inserting the following:

"(E) mass transportation services which are planned, designed, and carried out to meet the special needs of elderly persons and persons with disabilities, with such grants and loans being subject to all of the terms, conditions, requirements, and provisions applicable to grants and loans made under this section; and".

SEC. 314. CAPITAL GRANTS—ELIGIBLE ACTIVITIES.

Section 3(a)(1) of the Act (49 U.S.C. App. 1602(a)(1)) is amended by adding at the end the following:

"(F) the development of corridors to support fixed guideway systems, including bus service improvements, marketing of bus service, protection of rights-of-way through acquisition, transportation system management improvements such as dedicated bus and high occupancy vehicle lanes and construction of park and ride lots, and any other improvements that the Secretary may determine would result in increased transit usage in the corridor.".

SEC. 315. CRITERIA FOR NEW STARTS.

Section 3(i) of the Act (49 U.S.C. App. 1602(i)) is amended to read as follows:

"(i) NEW START CRITERIA.—

"(1) DETERMINATIONS.—A grant or loan for construction of a new fixed guideway system or extension of any fixed guideway system may not be made under this section unless the Secretary determines that the proposed project—

"(A) is based on the results of an alternatives analysis and preliminary engineering;

"(B) is cost-effective;

"(C) is supported by an acceptable degree of local financial commitment, including evidence of stable and dependable funding sources to construct, maintain, and operate the system or extension.

"(2) CONSIDERATIONS.—In making determinations under this subsection, the Secretary—

"(A) shall consider the direct and indirect costs of relevant alternatives;

"(B) shall account for costs related to such factors as congestion relief, improved mobility, air pollution, noise pollution, congestion, energy consumption, and all associated ancillary and mitigation costs necessary to implement each alternative analyzed; and

"(C) shall identify and consider transit supportive existing land use policies and future patterns, and consider other factors including the degree to which the project increases the mobility of the transit dependent population or promotes economic development, and other factors that the Secretary deems appropriate to carry out the purposes of this Act.

"(3) GUIDELINES.—

"(A) IN GENERAL.—The Secretary shall issue guidelines that set forth the means by which the Secretary shall evaluate cost-effectiveness, results of alternatives analysis, and degree of local financial commitment for the purposes of paragraph (1).

"(B) COST-EFFECTIVENESS.—Cost-effectiveness thresholds shall be adjusted to account for inflation and to reflect differences in local land costs, construction costs, and operating costs.

"(C) FINANCIAL COMMITMENT.—The degree of local financial commitment shall be considered acceptable only if—

"(i) the proposed project plan provides for the availability of contingency funds that the Secretary determines to be reasonable to cover unanticipated cost overruns;

"(ii) each proposed local source of capital and operating funding is stable, reliable, and available within the proposed project timetable; and

"(iii) local resources are available to operate the overall proposed transit system (including essential feeder bus and other services necessary to achieve the projected ridership levels) without requiring a reduction in existing transit services in order to operate the proposed project.

"(D) STABILITY ASSESSMENT.—In assessing the stability, reliability, and availability of proposed sources of local funding, the Secretary shall consider—

"(i) existing grant commitments;

"(ii) the degree to which funding sources are dedicated to the purposes proposed; and

"(iii) any debt obligations which exist or are proposed by the recipient for the proposed project or other transit purposes.

"(4) PROJECT ADVANCEMENT.—No project shall be advanced from alternatives analysis to preliminary engineering unless the Secretary finds that the proposed project meets the requirements of this section and there is a reasonable chance that the project will continue to meet these requirements at the conclusion of preliminary engineering.

"(5) EXCEPTIONS.—

"(A) IN GENERAL.—A new fixed guideway system or extension shall not be subject to the requirements of this subsection and the simultaneous evaluation of such projects in more than one corridor in a metropolitan area shall not be limited if (i) the project is located within an extreme or severe nonattainment area and is a transportation control measure, as defined by the Clean Air Act, that is required to carry out an approved State Implementation Plan, or (ii) assistance provided under this section accounts for less than $25,000,000 or less than ⅓ of the total cost of the project or an appropriate program of projects as determined by the Secretary.

"(B) EXPEDITED PROCEDURES.—In the case of a project that is (i) located within a nonattainment area that is not an extreme or severe nonattainment area, (ii) a transportation control measure, as defined in the Clean Air Act, and (iii) required to carry out an approved State Implementation Plan, the simultaneous evaluation of projects in more than one corridor in a metropolitan area shall not be limited and the Secretary shall make determinations under this subsection with expedited procedures that will promote timely implementation of the State Implementation Plan.

"(C) EXCLUSION FOR CERTAIN PROJECTS.—That portion of a project financed with highway funds made available under the Federal-Aid Highway Act of 1991 shall not be subject to the requirements of this subsection.

"(6) PROJECT IMPLEMENTATION.—A project funded pursuant to this subsection shall be implemented by means of a full funding contract.".

SEC. 316. ADVANCE CONSTRUCTION; TECHNICAL AMENDMENT RELATED TO INTEREST COST.

Section 3(1)(2)(B) of the Act (49 U.S.C. App. 1602(1)(2)(B)) is amended by striking all after "greater than" and inserting "the most favorable interest terms reasonably available for the project at the time of borrowing.".

SEC. 317. FEDERAL SHARE FOR ADA AND CLEAN AIR ACT COMPLIANCE.

Section 12 of the Act (49 U.S.C. 1608) is amended by inserting at the end thereof the following new subsection:

"(k) FEDERAL SHARE FOR CERTAIN PROJECTS.—The Federal grant for a project to be assisted under this Act that involves the acquisition of bus-related equipment required by the Clean Air Act or the Americans with Disabilities Act of 1990 shall be 90 percent of the net project cost of such equipment attributable to compliance with such Acts. The Secretary shall have discretion to determine, through practicable administrative procedures, the costs attributable to equipment specified in the preceding sentence.".

SEC. 318. CAPITAL GRANTS—DELETION OF EXTRANEOUS MATERIAL.

Section 4 of the Act (49 U.S.C. App. 1603) is amended—

(1) by inserting at the end of subsection (a) the following: "If the Secretary gives special consideration to projects that include more than the minimum non-Federal share of the net project cost required under this subsection, the Secretary shall give reasonable consideration to differences in the fiscal capacity of State and local governments."; and

(2) by striking subsections (b) through (g) and subsection (i) and redesignating subsection (h) as subsection (b).

SEC. 319. COMPREHENSIVE TRANSPORTATION STRATEGIES.

Section 8 of the Act (49 U.S.C. App. 1607) is amended to read as follows:

"SEC. 8. COMPREHENSIVE TRANSPORTATION STRATEGIES.

"(a) METROPOLITAN TRANSPORTATION STRATEGIES.—

"(1) IN GENERAL.—It is in the national interest to encourage and promote the development of transportation systems that integrate various modes of transportation and efficiently maximize mobility of people and goods within and through urbanized areas and minimize transportation-related fuel consumption and air pollution. The Secretary shall cooperate with State and local officials in metropolitan areas in the development of comprehensive transportation strategies for achieving this objective.

"(2) METROPOLITAN PLANNING ORGANIZATIONS.—

"(A) IN GENERAL.—A metropolitan planning organization shall be designated for each urbanized area of more than 50,000 in population by agreement among the Governor and units of general purpose local government representing at least 75 percent of the affected population, including the central city or cities, as defined by the Bureau of the Census. In those metropolitan areas eligible for designation as transportation management areas in accordance with subparagraph (D), the metropolitan planning organization shall include local elected officials, officials of agencies that administer or operate major modes of transportation in the metropolitan area (including, at a minimum, all transportation agencies that were included as of June 1, 1991), and appropriate State officials. For purposes of this section, the term 'metropolitan area' shall mean an area for which one metropolitan planning organization is responsible.

"(B) CONTINUING DESIGNATION.—Designations of metropolitan planning organizations, whether made under this or earlier provisions of law, shall remain in effect until revoked by agreement among the Governor and the affected units of general purpose local government, or as otherwise provided under State or local procedures, except that a metropolitan planning organization (i) shall be redesignated within a period of 12 months if the metropolitan area is designated as a transportation management area under subparagraph (D), and (ii) metropolitan planning organizations may be reorganized by agreement among the Governor and units of general purpose local government representing at least 75 percent of the affected population including the central city or cities, as defined by the Bureau of the Census, as appropriate to carry out the provisions of this Act. The Secretary shall establish practicable procedures and timetables that the Secretary determines to be appropriate for metropolitan planning organizations to meet the requirements of subparagraph (A).

"(C) RESPONSIBILITY OF THE GOVERNOR.—When a metropolitan planning organization is designated or reorganized, the Governor shall ensure that the metropolitan planning organization is structured to—

"(i) give balanced assessment to all modes of transportation, including roadway and public transit facilities;

"(ii) give full consideration to the need for mobility of people and goods into and through central cities within the metropolitan area; and

"(iii) otherwise carry out the metropolitan planning organization's responsibilities under Federal law. The Governor shall certify to the Secretary that the requirements of this subparagraph have been met.

"(D) TRANSPORTATION MANAGEMENT AREAS.—The Secretary shall publish and annually update a list of those metropolitan areas that—

"(i) have populations of more than 250,000; or

"(ii) are nonattainment areas under the Clean Air Act (42 U.S.C. 7401 et seq.).

The Secretary shall designate such areas to be transportation management areas. The Secretary may designate additional metropolitan areas to be transportation management areas upon the request of the Governor and the metropolitan planning organization. Such additional metropolitan areas may include ecologically fragile areas of national significance that are expected to be significantly affected by transportation decisions. The designation of a transportation management area shall remain in effect until revoked by the Secretary. The metropolitan planning organization in a transportation management area shall carry out a continuing, cooperative and comprehensive transportation planning and programming process in cooperation with the State and transit operators and have such additional authorities and responsibilities as are specified in this Act.

"(E) TRANSITIONAL PROVISION.—The Secretary shall designate as transportation management areas—

"(i) not less than 20 percent of the metropolitan areas on the list in subparagraph (D) within 1 year after the date of enactment of this section;

"(ii) not less than 40 percent of such areas within 2 years after the date of enactment of this section;

"(iii) not less than 60 percent of such areas within 3 years after the date of enactment of this section;

"(iv) not less than 80 percent of such areas within 4 years after the date of enactment of this section; and

"(v) all such areas thereafter.

To the extent the Secretary deems practicable after taking into account local cir-

cumstances, the Secretary shall exceed the percentages required in this subparagraph and give priority to designation of metropolitan areas that have the most severe problems of air quality and traffic congestion. The Secretary shall designate all nonattainment areas that are classified under the Clean Air Act as moderate, serious, severe, or extreme nonattainment areas for ozone or serious nonattainment areas for carbon monoxide within 2 years after the date of enactment of the Federal Transit Act of 1991.

"(3) METROPOLITAN AREA BOUNDARIES.—

"(A) IN GENERAL.—For the purposes of this Act, the boundaries of any metropolitan area shall be determined by agreement between the metropolitan planning organization and the Governor. Each metropolitan area shall include at least the existing urbanized area and the contiguous area that can reasonably be expected to be urbanized within the subsequent 20-year period.

"(B) TREATMENT OF LARGE URBAN AREAS.—More than 1 metropolitan planning organization may be designated within a metropolitan statistical area, as defined by the Bureau of the Census, if—

"(i) more than 1 metropolitan planning organization was designated within such area on January 1, 1991; and

"(ii) the Secretary determines that the size and complexity of the urbanized area make designation of more than 1 metropolitan planning organization appropriate.

If more than 1 metropolitan planning organization has authority within a metropolitan statistical area, appropriate provision, as determined by the Secretary, shall be made to coordinate the metropolitan transportation strategies within such urban area.

"(C) INCLUSION OF CLEAN AIR NONATTAINMENT AREAS.—Any area that—

"(i) is found to be in nonattainment for any transportation-related pollutant under the Clean Air Act; or

"(ii) is determined by the Governor and the metropolitan planning organization to be likely to be significantly affected by air pollution within a reasonable period of time shall be included within the boundaries of the appropriate metropolitan area, as determined by the Governor and the metropolitan planning organization. If more than one metropolitan planning organization has authority within a nonattainment area, appropriate provision, as determined by the Secretary, shall be made to coordinate the metropolitan transportation strategies within such nonattainment area.

"(D) COORDINATION IN MULTI-STATE AREAS.—

"(i) IN GENERAL.—The Secretary shall establish such requirements as the Secretary deems appropriate to encourage Governors and metropolitan planning organizations with responsibility for a portion of a multi-State Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area, as defined by the Bureau of the Census, to provide coordinated transportation planning for the entire Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area.

"(ii) COMPACTS.—The consent of the Congress is hereby given to any 2 or more States to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as they pertain to interstate areas and to localities within such States, and to establish such agencies, joint or otherwise, as they may deem desirable for making such agreements and compacts effective.

"(4) DEVELOPMENT OF TRANSPORTATION STRATEGY.—

"(A) IN GENERAL.—Each metropolitan planning organization shall prepare and update periodically, according to a schedule that the Secretary determines to be appropriate, a metropolitan transportation strategy for its metropolitan area as provided in this section. In developing the strategy, the metropolitan planning organization shall consider the environmental, energy, land use, and other regional effects of all transportation projects to be undertaken within the metropolitan area, without regard to funding source.

"(B) PUBLICATION OF STRATEGIES.—A metropolitan transportation strategy shall be—

"(i) published or otherwise made readily available for public review; and

"(ii) submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish as appropriate for the publication and submission of metropolitan transportation strategies to carry out this section.

"(C) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In nonattainment areas for transportation-related pollutants, the metropolitan planning organization shall coordinate the development of a metropolitan transportation strategy with the process for development of the transportation measures of the State Implementation Plan required by the Clean Air Act.

"(D) PARTICIPATION BY INTERESTED PARTIES.—Prior to approving a metropolitan transportation strategy, each metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation and other interested parties with a reasonable opportunity to participate in the development of the strategy, in a manner that the Secretary deems appropriate.

"(E) CERTIFICATION OF COMPLIANCE.—The Secretary shall assure that each metropolitan planning organization is carrying out its responsibilities under applicable provisions of Federal law. The Secretary shall, not less frequently than every 3 years, provide certification to those metropolitan planning organizations that, in the opinion of the Secretary, are carrying out applicable requirements of Federal law. If the Secretary finds, after reasonable notice and opportunity for hearing, that a metropolitan planning organization is not carrying out its responsibilities under applicable provisions of Federal law, the Secretary shall deny certification and, until corrective action satisfactory to the Secretary is taken, may suspend or disapprove in whole or in part the expenditure within the metropolitan area of funds made available under the Federal-Aid Highway Act of 1991 or this Act. The Secretary shall not (i) withhold certification under this section based upon the policies and criteria established by a metropolitan planning organization for determining the feasibility of private enterprise participation in accordance with section 8(e), or (ii) otherwise impede a metropolitan planning organization's implementation of such policies and criteria.

"(5) CONTENTS OF STRATEGY.—A metropolitan transportation strategy under this section shall be in a form that the Secretary determines to be appropriate and shall, at a minimum—

"(A) identify transportation facilities (including but not necessarily limited to major roadways, mass transit, and multimodal and intermodal facilities) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions, such as—

"(i) moving goods within the metropolitan area and among distant markets;

"(ii) enabling people to move quickly to and from home, jobs and other destinations; and

"(iii) connecting complementary modes of transportation (such as highways, transit systems, ports, railroads and airlines);

"(B) assess major demands on the metropolitan transportation system, projected over the subsequent 20-year period;

"(C) set forth a long-range strategy for meeting metropolitan area personal mobility and goods transportation needs, including State and local actions to manage travel demand, improve transportation operations and management, increase the efficiency and effectiveness of existing facilities, or provide new transportation capacity; and

"(D) explain how proposed transportation decisions will—

"(i) achieve compliance with applicable requirements of the Clean Air Act, the Clean Water Act, and other environmental and resource conservation laws;

"(ii) further applicable Federal, State and local energy conservation programs, goals and objectives; and

"(iii) affect other important social, economic and environmental objectives of the metropolitan area as reflected in publicly adopted plans, such as those concerning housing, community development, and historic preservation;

"(E) explain—

"(i) the extent to which State and local policies regarding land use and transportation will affect metropolitan-wide mobility; and

"(ii) how proposed transportation decisions will affect future travel demand, growth in vehicle use, mobile source emissions, and land use and development, taking into consideration the provisions of all applicable short-term and long-term land use and development plans;

"(F) include a financial plan that demonstrates how the metropolitan transportation strategy can be implemented, which plan shall indicate resources from all sources that are reasonably expected to be made available to carry out the strategy, and recommend any innovative financing techniques to finance needed projects and programs, including such techniques as value capture, tolls, and congestion pricing;

"(G) project capital investment and other measures necessary to—

"(i) ensure the preservation of the existing metropolitan transportation system, including requirements for operations, resurfacing, restoration and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization and rehabilitation of existing and future public transit facilities; and

"(ii) make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods; and

"(H) indicate as appropriate proposed transportation enhancement activities.

"(6) ABBREVIATED STRATEGIES FOR CERTAIN AREAS.—For metropolitan areas not designated as transportation management areas under paragraph (2)(D), the Secretary may provide for the development of abbreviated metropolitan transportation strategies that the Secretary determines to be appropriate to achieve the purposes of this section, taking into account the complexity of transpor-

tation problems, including transportation related air quality problems, in such areas.

"(7) STATEWIDE STRATEGY.—The State shall develop a statewide transportation strategy, in a form acceptable to the Secretary, that shall take into account the transportation needs of areas for which no metropolitan planning organization has been designated.

"(b) TRANSPORTATION IMPROVEMENT PROGRAMS.—

"(1) DEVELOPMENT OF PROGRAMS.—

"(A) IN GENERAL.—The metropolitan planning organization, in cooperation with the State and relevant transit operators, shall develop and submit to the Secretary for review a transportation improvement program for the ensuing period of not less than 3 years and, to the extent practicable, for subsequent periods of not less than 3 years.

"(B) CONTENTS.—The program shall—

"(i) include all projects within the metropolitan area proposed for funding pursuant to the Federal-Aid Highway Act of 1991 and this Act, except as provided in clause (iii);

"(ii) conform with the approved metropolitan transportation strategy and the State Implementation Plan required under the Clean Air Act; and

"(iii) include a project, or an identified phase of a project, only if full funding for such project or project phase can reasonably be anticipated to be available within the period of time contemplated for completion of the project and, in the case of a major project to expand the transportation capacity, an appropriate range of alternatives has been analyzed pursuant to the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

"(2) PERIODIC REVIEW AND REVISION.—The metropolitan planning organization shall update or reapprove the program not less frequently than annually, except that the Secretary may provide for a less frequent updating for areas that are not designated to be transportation management areas, as the Secretary determines to be appropriate. A metropolitan planning organization may amend the program at any time, if the amendment is consistent with the metropolitan transportation strategy.

"(3) NOTICE AND COMMENT.—Prior to approving a transportation improvement program, a metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, and other interested parties with reasonable notice of and an opportunity to comment on the proposed program.

"(4) PRIORITY PROJECTS.—The program shall identify priority projects reflecting projected funding and the objectives of the metropolitan transportation strategy that shall be carried out for each relevant programming period.

"(5) STATE PROGRAMS.—The Governor shall develop and submit to the Secretary, in a form acceptable to the Secretary, a transportation improvement program covering a period of not less than 3 years for areas for which no metropolitan planning organization has been designated and shall include in such program the projects proposed for funding in both metropolitan and nonmetropolitan areas under sections 108 and 109 of the Federal-Aid Highway Act of 1991.

"(c) PROJECT SELECTION WITHIN TRANSPORTATION MANAGEMENT AREAS.—

"(1) APPROVAL OF PROJECTS.—For projects within a transportation management area, the metropolitan planning organization shall submit to the Governor and the Secretary a list of highway and transit projects and activities that the metropolitan planning organization has approved for funding in the ensuing period, which shall not exceed 2 years. The list shall specify for each approved project the programmatic source of Federal assistance available for approval by the metropolitan planning organization. Federal assistance required for the approved projects and activities shall not exceed Federal assistance made available for project selection by the metropolitan planning organization for that period under section 106 of the Federal-Aid Highway Act of 1991 and sections 3 and 9 of this Act. When submitting a list of projects and activities under this paragraph, the metropolitan planning organization shall certify to the Secretary that the list—

"(A) was developed in accordance with a continuing, cooperative and comprehensive planning process that the Secretary has found satisfactory under subsection (a)(4)(E); and

"(B) is consistent with a transportation improvement program that is submitted to the satisfaction of the Secretary under subsection (b)(2).

"(2) REQUIREMENT OF APPROVAL.—Notwithstanding any other provision of law, no project or activity to be carried out with Federal participation pursuant to the Federal-Aid Highway Act of 1991 or this Act may be approved within a transportation management area unless it is included in the list of projects approved by the metropolitan planning organization under paragraph (1).

"(3) EXCEPTIONS.—(A) Paragraph (2) shall not apply to projects or activities that in the determination of the Secretary, are mandated by the Americans with Disabilities Act of 1990.

"(B) Nothing in this section confers on a metropolitan planning organization the authority to intervene in the management of a transportation agency.

"(4) RECAPTURE.—Amounts made available under the Federal-Aid Highway Act of 1991 or this Act for project selection by a metropolitan planning organization in a transportation management area shall remain available for a period of 3 years following the close of the fiscal year for which such funds are made available to the metropolitan area. The Secretary shall recapture any funds not obligated during such period and reallocate the funds nationally as soon as practicable according to the formula for the program under which the funds were made available. For the purposes of this paragraph, funds shall be considered to be obligated if the funds are reserved to help finance a project for which an application is pending under section 3.

"(5) TRANSFER OF FUNDS.—Funds made available for a highway project under this Act shall be transferred to and administered by the Federal Highway Administration in accordance with the requirements of the Federal-Aid Highway Act of 1991. Funds made available for a transit project under the Federal-Aid Highway Act of 1991 shall be transferred to and administered by the Secretary in accordance with the requirements of this Act.

"(d) GRANTS.—

"(1) ELIGIBILITY.—The Secretary is authorized to contract for and make grants to States and local public bodies and agencies thereof, or enter into agreements with other Federal departments and agencies, for the planning, engineering, design, and evaluation of public transportation projects, and for other technical studies. Activities assisted under this section may include—

"(A) studies relating to management, operations, capital requirements, and economic feasibility;

"(B) evaluation of previously funded projects; and

"(C) other similar or related activities preliminary to and in preparation for the construction, acquisition or improved operation of mass transportation facilities and equipment.

"(2) CRITERIA.—A grant, contract or working agreement under this section shall be made in accordance with criteria established by the Secretary.

"(e) PRIVATE ENTERPRISE.—The plans and programs required by this section shall encourage to the maximum extent feasible the participation of private enterprise. Where facilities and equipment are to be acquired which are already being used in mass transportation service in the urban areas, the program must provide that they shall be so improved (through modernization, extension, addition, or otherwise) that they will better serve the transportation needs of the area.

"(f) USE FOR COMPREHENSIVE PLANNING.—

"(1) IN GENERAL.—The Secretary shall ensure, to the extent practicable, that amounts made available under section 21(c)(1) for the purposes of this section are used to support balanced and comprehensive transportation planning that takes into account the relationships among land use and all transportation modes, without regard to the programmatic source of the planning funds.

"(2) FORMULA ALLOCATION TO ALL METROPOLITAN AREAS.—The Secretary shall apportion 80 percent of the amounts made available under section 21(c)(1) to States in the ratio that the population in urbanized areas, in each State, bears to the total population in urbanized areas, in all the States as shown by the latest available decennial census, except that no State shall receive less than ½ of 1 percent of the amount apportioned under this paragraph. Such funds shall be allocated to metropolitan planning organizations designated under section 8(a)(2)(A) by a formula, developed by the State in cooperation with metropolitan planning organizations and approved by the Secretary, that considers population in urbanized areas and provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in section 8 of this Act. The State shall make such funds available promptly to eligible metropolitan planning organizations according to procedures approved by the Secretary.

"(3) SUPPLEMENTAL ALLOCATION TO TRANSPORTATION MANAGEMENT AREAS.—The Secretary shall apportion 20 percent of the amounts made available under section 21(c)(1) to States to supplement allocations under subparagraph (B) for metropolitan planning organizations in transportation management areas. Such funds shall be allocated according to a formula that reflects the additional costs of carrying out planning, programming, and project selection responsibilities under this section in such areas.

"(4) HOLD HARMLESS.—The Secretary shall ensure, to the maximum extent practicable, that no metropolitan planning organization is allocated less than the amount it received by administrative formula under section 8 of this Act in fiscal year 1991. To comply with the previous sentence, the Secretary is authorized to make a pro rata reduction in other amounts made available to carry out section 21(c).

"(5) FEDERAL SHARE PAYABLE.—The Federal share payable for activities under this para-

graph shall be 75 percent except where the Secretary determines that it is in the Federal interest not to require a State or local match.".

SEC. 320. SECTION 9 PROGRAM—ALLOCATIONS.

Section 9(a) of the Act (49 U.S.C. App. 1607a(a)), is amended—

(1) in paragraph (1), by striking "8.64" and inserting "8.90"; and

(2) in paragraph (2), by striking "88.43" and inserting "91.10".

SEC. 321. SECTION 9 FORMULA GRANT PROGRAM—DISCRETIONARY TRANSFER OF APPORTIONMENT.

Section 9 of the Act (49 U.S.C. App. 1607a) is amended—

(1) in subsection (j)(1), by inserting after the first sentence the following: "In a transportation management area designated pursuant to section 8(a)(2)(D), grants for construction projects under this section also shall be available for highway projects if—

"(A) such use is approved by the metropolitan planning organization in accordance with section 8(c) after appropriate notice and opportunity for comment and appeal is provided to affected transit providers; and

"(B) in the determination of the Secretary, appropriate provision is made for investments mandated by the Americans with Disabilities Act of 1990."; and

(2) by adding at the end of subsection (j) the following:

"(3) Grants for construction projects under this section may be available for highway projects only if funds used for the State or local share portion of such highway projects are eligible to fund either highway or transit projects, or, when in the determination of the Secretary there exists under State or local law a sufficient amount of funds from a dedicated source which is available to fund local transit projects.".

SEC. 322. SECTION 9 PROGRAM—ELIMINATION OF INCENTIVE TIER.

Section 9 of the Act (49 U.S.C. App. 1607a) is amended—

(1) in subsection (b)(2), by striking "95.61 per centum of the" and inserting "The";

(2) in subsection (b), by striking paragraph (3);

(3) in subsection (c)(2), by striking "90.8 per centum of the" and inserting "The"; and

(4) by striking subsection (c)(3).

SEC. 323. SECTION 9 PROGRAM—ENERGY EFFICIENCY.

Section 9(b) of the Act (49 U.S.C. 1607a(b)) is amended by adding at the end the following:

"(3) If a designated recipient under this section demonstrates to the satisfaction of the Secretary that energy or operating efficiencies would be achieved by actions that reduce equipment use but provide the same frequency of revenue service to the same number of riders, the recipient's apportionment under paragraph (2)(B) shall not be reduced as a result of such actions.".

SEC. 324. SECTION 9 PROGRAM—APPLICABILITY OF SAFETY PROVISIONS.

Section 9(e)(1) of the Act (49 U.S.C. App. 1607a(e)(1)) is amended in the first sentence by striking "and 19", and inserting "19, and 22".

SEC. 325. SECTION 9 PROGRAM—CERTIFICATIONS.

(a) ANNUAL SUBMISSIONS.—Section 9(e)(2) of the Act (49 U.S.C. App. 1607a(e)(2)) is amended by inserting after the first sentence the following: "Such certifications and any additional certifications required by law shall be consolidated into a single document to be submitted annually as part of the grant application under this section. The Secretary shall annually publish a list of all required certifications in conjunction with section 9(q).".

(b) STREAMLINED PROCEDURES.—Section 9(e)(3) of the Act (49 U.S.C. App. 1607a(e)(3)) is amended by adding at the end the following: "The Secretary shall establish streamlined administrative procedures to govern compliance with the certification requirement under subparagraph (B) with respect to track and signal equipment used in ongoing operations.".

SEC. 326. SECTION 9 PROGRAM—PROGRAM OF PROJECTS.

Section 9(f) of the Act (49 U.S.C. App. 1607a(f)) is amended—

(1) at the end of paragraph (3), by striking "and";

(2) at the end of paragraph (4), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(5) assure that the proposed program of projects provides for the maximum feasible coordination of public transportation services assisted under this section with transportation services assisted by other Federal sources.".

SEC. 327. FERRY ROUTES.

Section 9 of the Act (49 U.S.C. App. 1607a) is amended by adding at the end thereof the following new subsection:

"(r) FERRY SERVICES.—A vessel used in ferryboat operations funded under this section that is part of a statewide ferry system may from time to time be operated outside of the urbanized area in which service is provided to accommodate periodic maintenance so long as the mass transportation service funded under this section is not thereby significantly reduced.".

SEC. 328. SECTION 9 PROGRAM—CONTINUED ASSISTANCE FOR COMMUTER RAIL IN SOUTHERN FLORIDA.

Section 329 of the Federal Mass Transportation Act of 1987 (101 Stat. 239) is amended—

(1) in the first sentence, by striking all that follows "year" and inserting a period; and

(2) in the second sentence, by striking all that follows "service" and inserting a period.

SEC. 329. SECTION 11—UNIVERSITY TRANSPORTATION CENTERS.

Section 11 of the Act (49 U.S.C. App. 1607c) is amended—

(1) in the third sentence of subsection (a), by inserting "safety," after "engineering,";

(2) by striking paragraph (7) of subsection (b) and inserting the following:

"(7) PROGRAM COORDINATION.—The Secretary shall provide for coordination of the research, education, training and technology transfer in the research centers, the dissemination of the results of the research, and a clearinghouse between the centers and the transportation industry. The Secretary shall review and evaluate the programs carried out by the grant recipients at least annually.";

(3) by striking paragraph (8) of subsection (b) and inserting the following:

"(8) ADMINISTRATION.—Up to 1 percent of the funds made available from any source to carry out this subsection shall be available to the Secretary for the administrative expenses in connection with the performance of such administrative responsibilities."; and

(4) by adding at the end of subsection (b) the following:

"(11) AVAILABILITY OF RESEARCH FUNDS.—Notwithstanding any other provision of law, funds appropriated or otherwise made available to the Department of Transportation in any Act for the purpose of transportation research may, at the discretion of the Secretary, be made available to one or more of the transportation research centers for the conduct of research compatible with the research conducted in such centers pursuant to authorizations under this Act or from the Highway Trust Fund.

"(12) NATIONAL CENTERS.—To accelerate the involvement and participation of minorities and women in transportation-related professions, particularly in the science, technology, and engineering disciplines, the Secretary shall make grants to colleges or universities to establish three additional National Centers for Transportation Management, Research, and Development. The National Centers shall give special attention to the design, development, and implementation of research, training, and technology transfer activities to increase the number of highly skilled minorities and women in the work force. The Centers shall meet all guidelines and criteria applicable to Centers under this subsection. In awarding the grants, the Secretary shall consider the commitment which the college or university demonstrates to enrollment of minorities and women.".

SEC. 330. RULEMAKING.

Section 12(i) of the Act (49 U.S.C. App. 1608(i)) is amended by adding at the end the following:

"(3) LIMITATION.—The Secretary may not use any other method to propose or implement rules governing activities under this Act except as provided under this subsection.".

SEC. 331. SECTION 12—TRANSFER OF FACILITIES AND EQUIPMENT.

Section 12 of the Act (49 U.S.C. App. 1608) is amended by adding at the end the following:

"(l) TRANSFER OF CAPITAL ASSET.—

"(1) AUTHORIZATION.—If a recipient determines that facilities and equipment acquired with assistance under this Act no longer are needed for their original purposes, the Secretary may authorize the transfer of such assets to any public body to be used for any public purpose, with no further obligation to the Federal Government, on condition that any such facilities (including land) remain in public use for a period of not less than 5 years after the date of the transfer.

"(2) DETERMINATION.—Before authorizing a transfer under paragraph (1) for any public purpose other than mass transportation, the Secretary shall first determine that—

"(A) there are no purposes eligible for assistance under this Act for which the asset should be used;

"(B) the overall benefit of allowing the transfer outweighs the Federal Government interest in liquidation and return of the Federal financial interest in the asset, after consideration of fair market value and other factors; and

"(C) in the case of facilities (including land), the Secretary determines through an appropriate screening or survey process that there is no interest in acquiring the asset for Federal use.

"(3) DOCUMENTATION.—Where the Secretary finds that a transfer is warranted, the Secretary shall set forth in writing the rationale for the decision that the transfer is appropriate under the standards in paragraph (2).

"(4) RELATION TO OTHER PROVISIONS.—The provisions of this section shall be in addition to and not in lieu of any other provision of law governing use and disposition of facilities and equipment under an assistance agreement.".

SEC. 332. SPECIAL PROCUREMENT.

Section 12 of the Act (49 U.S.C. App. 1608) is amended by adding at the end the following:

"(m) SPECIAL PROCUREMENT INITIATIVES.—

"(1) TURNKEY SYSTEM PROCUREMENTS.—

"(A) IN GENERAL.—In order to advance new technologies and lower the cost of constructing new mass transportation systems, the Secretary may allow the solicitation for a turnkey system project to be funded under this Act to be conditionally awarded before Federal requirements have been met on the project so long as the award is made without prejudice to the implementation of those Federal requirements. Federal financial assistance under this Act may be made available for such a project when the recipient has complied with relevant Federal requirements.

"(B) INITIAL DEMONSTRATION PHASE.—In order to develop regulations applying generally to turnkey system projects, the Secretary is authorized to approve not to exceed 4 projects for an initial demonstration phase. The results of such demonstration projects shall be taken into consideration in the development of the regulations implementing this subsection.

"(C) TURNKEY SYSTEM PROJECT DEFINED.—As used in this subsection, the term 'turnkey system' means a vendor-specific project under which a recipient contracts with a vendor to build a transit system that meets specific performance criteria and which is operated by the vendor for a period of time.

"(2) MULTIYEAR ROLLING STOCK PROCUREMENTS.—

"(A) IN GENERAL.—A recipient procuring rolling stock with Federal financial assistance under this Act may enter into a multiyear agreement for the purchase of such rolling stock and replacement parts pursuant to which the recipient may exercise an option to purchase additional rolling stock or replacement parts for a period not to exceed 5 years from the date of the original contract.

"(B) CONSORTIA.—The Secretary shall permit 2 or more recipients to form a consortium (or otherwise act on a cooperative basis) for purposes of procuring rolling stock in accordance with this paragraph and other Federal procurement requirements.".

SEC. 333. SECTION 16—ELDERLY PERSONS AND PERSONS WITH DISABILITIES.

Section 16 of the Act (49 U.S.C. App. 1612) is amended—

(1) by striking "elderly and handicapped persons" each time the phrase appears and inserting "elderly persons and persons with disabilities";

(2) in subsection (b)(2), by striking "to private nonprofit corporations and associations" and all that follows through "inappropriate," and inserting "to the Governor of each State for allocation to private nonprofit organizations and public bodies approved by the State to coordinate transportation services to elderly persons and persons with disabilities for the specific purpose of assisting such organizations and public bodies to provide transportation services to elderly persons and persons with disabilities,";

(3) by redesignating subsections (c) through (e) as subsections (d) through (f), respectively; and

(4) by inserting after subsection (b) the following:

"(c)(1) Funds made available for purposes of subsection (b) may be used for transportation projects to assist in the provision of transportation services for elderly persons and persons with disabilities which are included in a State program of projects. Such programs shall be submitted annually to the Secretary for approval and shall contain an assurance that the program provides for maximum feasible coordination of transportation services assisted under this section with transportation services assisted by other Federal sources.

"(2) Sums made available for expenditure for purposes of subsection (b) shall be apportioned to the States on the basis of a formula administered by the Secretary which shall take into consideration the number of elderly persons and persons with disabilities in each State.

"(3) Any amounts of a State's apportionment under this subsection that remain available for obligation at the beginning of the 90-day period before the expiration of the period of availability of such amounts shall be available to the Governor for transfer to supplement funds apportioned to the State under section 18(a) or section 9(d).

"(4) The Secretary shall, within 60 days following the enactment of the Federal Transit Act of 1991, promulgate regulations to allow vehicles purchased under this section to be leased to local public bodies and agencies for the purpose of improving transportation services designed to meet the special needs of elderly persons and persons with disabilities.".

SEC. 334. MEAL DELIVERY SERVICE TO HOMEBOUND PERSONS.

Section 16 of the Act (49 U.S.C. App. 1612) is amended by adding at the end the following:

"(g) MEAL DELIVERY SERVICE TO HOMEBOUND PERSONS.—In order to carry out subsection (a), the Secretary shall authorize mass transportation service providers receiving assistance under this section or section 18(a) to coordinate and assist in providing meal delivery service for homebound persons on a regular basis, if the activities authorized do not—

"(1) conflict with the provision of mass transportation services; or

"(2) result in a reduction of service to mass transportation passengers.".

SEC. 335. SECTION 18—TRANSFER OF FACILITIES AND EQUIPMENT.

Section 18 of the Act (49 U.S.C. App. 1614) is amended—

(1) by striking subsection (g) and redesignating subsection (h) as subsection (g); and

(2) by adding at the end the following:

"(h) TRANSFER OF FACILITIES AND EQUIPMENT.—In addition to the transfer authority under section 12(k), in administering this section, the State may transfer facilities and equipment acquired with assistance under this section or section 16(b) to any recipient eligible to receive assistance under this Act if the equipment or facilities continues to be used in accordance with the requirements of this section or section 16(b), as appropriate.".

SEC. 336. SECTION 18—GRANTS TO OFFSET AMTRAK LOSSES.

Section 18 of the Act (49 U.S.C. App. 1614) is amended by adding at the end the following:

"(i) AMTRAK LOSSES.—The amounts apportioned under subsection (a) to Maine, South Dakota, and Oklahoma may be used by such State to offset operating losses incurred by Amtrak in any calendar year as a result of providing passenger rail service to such State on the basis of an application pursuant to section 403 of the Rail Passenger Service Act (45 U.S.C. 563), and in conjunction with cost-sharing under subsection (b) of such section. Not more than 50 percent of a State's share of the operating losses incurred by Amtrak in such State may be offset with funds available under this section.".

SEC. 337. HUMAN RESOURCES PROGRAM SUPPORT.

Section 20 of the Act (49 U.S.C. App. 1616) is amended—

(1) by inserting "(a) IN GENERAL.—" before the first sentence; and

(2) by adding at the end the following:

"(b) USE OF FUNDS.—The Secretary is authorized to retain any funds returned to the Secretary in connection with a grant or contract under subsection (a), and such funds may continue to be used for the purpose of subsection (a).".

SEC. 338. AUTHORIZATIONS.

Section 21 of the Act (49 U.S.C. App. 1617) is amended to read as follows:

"SEC. 21. AUTHORIZATIONS.

"(a) FORMULA GRANT PROGRAMS.—

"(1) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund only to carry out sections 9B, 11(b), 12(a), 16(b), 18, 23, and 26 of this Act, and substitute mass transportation projects under section 103(e)(4) of title 23, United States Code, $1,070,500,000 for the fiscal year 1992, $1,220,000,000 for the fiscal year 1993, $1,300,000,000 for the fiscal year 1994, $1,450,000,000 for the fiscal year 1995, and $1,565,000,000 for the fiscal year 1996, to remain available until expended.

"(2) AUTHORIZED TO BE APPROPRIATED FROM THE TRUST FUND.—In addition to the amounts specified in paragraph (1), there are hereby authorized to be appropriated from the Transit Account of the Highway Trust Fund to carry out sections 9B, 11(b), 12(a), 16(b), 18, 23, and 26 of this Act, and substitute mass transportation projects under section 103(e)(4) of title 23, United States Code, $450,000,000 for the fiscal year 1992, $525,000,000 for the fiscal year 1993, $550,000,000 for the fiscal year 1994, $400,000,000 the fiscal year 1995, $300,000,000 for the fiscal year 1996, to remain available until expended.

"(3) FROM GENERAL FUNDS.—In addition to the amounts specified in paragraphs (1) and (2), there are hereby authorized to be appropriated to carry out sections 9, 11(b), 12(a), 16(b), 18, 23, and 26 of this Act, and substitute mass transportation projects under section 103(e)(4) of title 23, United States Code, $990,000,000 for the fiscal year 1992, $862,000,000 for the fiscal year 1993, $801,000,000 for the fiscal year 1994, $981,500,000 for the fiscal year 1995, and $1,160,000,000 for the fiscal year 1996, to remain available until expended.

"(b) SECTION 3 DISCRETIONARY AND FORMULA GRANTS.—

"(1) FROM THE TRUST FUND.—There shall be available from the Mass Transit Account of the Highway Trust Fund only to carry out section 3 of this Act, $535,000,000 for the fiscal year 1992, $580,000,000 for the fiscal year 1993, $680,000,000 for the fiscal year 1994, $750,000,000 for the fiscal year 1995, and $835,000,000 for the fiscal year 1996, to remain available until expended.

"(2) FROM GENERAL FUNDS.—In addition to the amounts specified in paragraph (1), there are hereby authorized to be appropriated to carry out section 3 of this Act, $775,000,000 for the fiscal year 1992, $780,000,000 for the fiscal year 1993, $798,600,000 for the fiscal year 1994, $828,900,000 for the fiscal year 1995, and $850,400,000 for the fiscal year 1996, to remain available until expended.

"(3) CONTRACTUAL OBLIGATIONS.—Approval by the Secretary of a grant or contract with

funds made available under subsection (a)(1) or (b)(1) shall be deemed a contractual obligation of the United States for payment of the Federal share of the cost of the project. Approval by the Secretary of a grant or contract with funds made available under subsection (a)(2), (a)(3) or (b)(2) shall be deemed a contractual obligation of the United States for payment of the Federal share of the cost of the project only to the extent that amounts are provided in advance in appropriations Acts.

"(c) SET-ASIDE FOR PLANNING, PROGRAMMING AND RESEARCH.—Before apportionment in each fiscal year of the funds made available or appropriated under subsection (a), an amount equivalent to 3.0 percent of funds made available or appropriated under subsections (a) and (b), and appropriated under the National Capital Transportation Act of 1969 shall be made available until expended as follows:

"(1) 45 percent of such funds shall be made available for metropolitan planning activities under section 8(f);

"(2) 5 percent of such funds shall be made available to carry out section 18(h);

"(3) 20 percent of such funds shall be made available to carry out the State program under section 26(a); and

"(4) 30 percent of such funds shall be made available to carry out the national program under section 26(b).

"(d) OTHER SET-ASIDES.—Before apportionment in each fiscal year of the funds made available or appropriated under subsection (a), of the funds made available or appropriated under subsections (a) and (b) and appropriated under the National Capital Transportation Act of 1969—

"(1) not to exceed an amount equivalent to 1.22 percent shall be available for administrative expenses to carry out section 12(a) of this Act and shall be available until expended;

"(2) not to exceed an amount equivalent to 1.5 percent shall be available for transportation services to elderly persons and persons with disabilities pursuant to the formula under section 16(b) of this Act, to be available until expended; and

"(3) $5,000,000 shall be available for the purposes of section 11(b) relating to university transportation centers for each of fiscal years 1992 through 1996.

"(e) COMPLETION OF INTERSTATE TRANSFER TRANSIT PROJECTS.—Of the amounts remaining available each year under subsections (a) and (b), after allocation pursuant to subsections (c) and (d), for substitute mass transportation projects under section 103(e)(4) of title 23, United States Code, there shall be available $160,000,000 for fiscal year 1992 and $164,843,000 for fiscal year 1993.

"(f) SET-ASIDE FOR RURAL TRANSPORTATION.—An amount equivalent to 6 percent of the amounts remaining available each year under subsection (a), after allocation pursuant to subsections (c), (d), and (e), shall be available pursuant to the formula under section 18, to remain available until expended.

"(g) SECTION 9 FUNDING.—The funds remaining available each year under subsection (a), after allocation pursuant to subsections (c), (d), (e) and (f), shall be available under section 9.".

SEC. 339. REPORT ON SAFETY CONDITIONS IN MASS TRANSIT.

Section 22 of the Act (49 U.S.C. App. 1618) is amended—

(1) by inserting "(a) IN GENERAL.—" after "SEC. 22."; and

(2) by adding at the end a new subsection as follows:

"(b) REPORT.—The Secretary shall, within 180 days after the date of enactment of this subsection, make a report to Congress to include—

"(1) actions taken to identify and investigate conditions in any facility, equipment, or manner of operation as part of the findings and determinations required of the Secretary in providing grants and loans under this Act;

"(2) actions taken by the Secretary to correct or eliminate any conditions found to create a serious hazard of death or injury as a condition for making funds available through grants and loans under this Act;

"(3) a summary of all passenger-related deaths and injuries resulting from unsafe conditions in any facility, equipment, or manner of operation of such facilities and equipment financed in whole or in part under this Act;

"(4) a summary of all employee-related deaths and injuries resulting from unsafe conditions in any facility, equipment, or manner of operation of such facilities and equipment financed in whole or in part under this Act;

"(5) a summary of all actions taken by the Secretary to correct or eliminate the unsafe conditions to which such deaths and injuries were attributed;

"(6) a summary of those actions taken by the Secretary to alert transit operators of the nature of the unsafe conditions which were found to create a serious hazard of death or injury; and

"(7) recommendations to the Congress by the Secretary of any legislative or administrative actions necessary to ensure that all recipients of funds under this Act will institute the best means available to correct or eliminate hazards of death or injury, including—

"(A) a timetable for instituting actions,

"(B) an estimate of the capital and operating cost to take such actions, and

"(C) minimum standards for establishing and implementing safety plans by recipients of funds under this Act.".

SEC. 340. SECTION 23—PROJECT MANAGEMENT OVERSIGHT.

Section 23(a) of the Act (49 U.S.C. App. 1619(a)) is amended—

(1) by striking paragraphs (1) through (5);

(2) by striking "½ of 1 percent of—" and inserting "¾ of 1 percent of the funds made available for any fiscal year to carry out sections 3, 9, or 18 of this Act, or interstate transfer transit projects under section 103(e)(4) of title 23, United States Code, in effect on September 30, 1991, or a project under the National Capital Transportation Act of 1969 to contract with any person to oversee the construction of any major project under any such section.".

SEC. 341. SECTION 26—PLANNING AND RESEARCH.

The Act is amended by adding at the end the following:

"SEC. 26. PLANNING AND RESEARCH PROGRAM.

"(a) STATE PROGRAM.—The funds made available under section 21(c)(3) shall be available for State programs as follows:

"(1) TRANSIT COOPERATIVE RESEARCH PROGRAM.—50 percent of that amount shall be available for the transit cooperative research program to be administered as follows:

"(A) INDEPENDENT GOVERNING BOARD.—The Secretary shall establish an independent governing board for such program to recommend mass transportation research, development, and technology transfer activities as the Secretary deems appropriate.

"(B) NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities as the Secretary determines are appropriate.

"(2) STATE PLANNING AND RESEARCH.—The remaining 50 percent of that amount shall be apportioned to the States for grants and contracts consistent with the purposes of sections 6, 8, 10, 11, and 20 of this Act.

"(A) APPORTIONMENT FORMULA.—Amounts shall be apportioned to the States in the ratio which the population in urbanized areas in each State, bears to the total population in urbanized areas, in all the States as shown by the latest available decennial census, except that no State shall receive less than ½ of 1 percent of the amount apportioned under this section.

"(B) ALLOCATION WITHIN A STATE.—A State may authorize a portion of its funds made available under this subsection to be used to supplement funds available under subsection (a)(1), as the State deems appropriate.

"(b) NATIONAL PROGRAM.—

"(1) IN GENERAL.—The funds made available under section 21(c)(4), shall be available to the Secretary for grants or contracts for the purposes of section 6, 8, 10, 11, or 20 of this Act, as the Secretary deems appropriate.

"(2) COMPLIANCE WITH ADA.—Of the amounts available under paragraph (1), the Secretary shall make available not less than $2,000,000 to provide transit-related technical assistance, demonstration programs, research, public education, and other activities that the Secretary deems appropriate to help transit providers achieve compliance with the Americans with Disabilities Act of 1990. To the extent practicable, the Secretary shall carry out this subsection through contract with a national nonprofit organization serving persons with disabilities with demonstrated capacity to carry out these activities.

"(3) SPECIAL INITIATIVES.—Of the amounts available under paragraph (1), an amount not to exceed 25 percent shall be available to the Secretary for special demonstration initiatives subject to such terms, conditions, requirements, and provisions as the Secretary deems consistent with the requirements of this Act, except that the provisions of section 3(e)(4) shall apply to operational grants funded for purposes of section 6. For nonrenewable grants that do not exceed $100,000, the Secretary shall provide expedited procedures governing compliance with requirements of this Act.

"(4) TECHNOLOGY DEVELOPMENT.—

"(A) PROGRAM.—The Secretary is authorized to undertake a program of transit technology development in coordination with affected entities.

"(B) INDUSTRY TECHNICAL PANEL.—The Secretary shall establish an Industry Technical Panel consisting of representatives of transportation suppliers and operators and others involved in technology development. A majority of the Panel members shall represent the supply industry. The Panel shall assist the Secretary in the identification of priority technology development areas and in establishing guidelines for project development, project cost sharing, and project execution.

"(C) GUIDELINES.—The Secretary shall develop guidelines for cost sharing in technology development projects funded under the section. Such guidelines shall be flexible in nature and reflect the extent of technical risk, market risk, and anticipated supplier benefits and pay back periods.

"(5) SUPPLEMENTARY FUNDS.—The Secretary may use funds appropriated under this subsection to supplement funds available under subsection (a)(1), as the Secretary deems appropriate.

"(6) FEDERAL SHARE.—Where there would be a clear and direct financial benefit to an entity under a grant or contract funded under this subsection or subsection (a)(1), the Secretary shall establish a Federal share consistent with that benefit.".

SEC. 342. TECHNICAL ACCOUNTING PROVISIONS.

Notwithstanding any other provision of law, any funds appropriated before October 1, 1983, under section 6, 10, 11, or 18 of the Act, or section 103(e)(4) of title 23, United States Code, in effect on September 30, 1991, that remain available for expenditure after October 1, 1991, may be transferred to and administered under the most recent appropriation heading for any such section.

SEC. 343. GAO REPORT ON CHARTER SERVICE REGULATIONS.

The Comptroller General of the United States shall submit to the Congress, not later than 12 months after the date of the enactment of the Act, a report evaluating the impact of existing charter service regulations. The report shall—

(1) assess the extent to which the regulations promote or impede the ability of communities to meet the transportation needs of government, civic, and charitable organizations in a cost-effective and efficient manner;

(2) assess the extent to which the regulations promote or impede the ability of communities to carry out economic development activities in a cost-effective and efficient manner;

(3) analyze the extent to which public transit operators and private charter carriers have entered into charter service agreements pursuant to the regulations; and

(4) analyze the extent to which such agreements enable private carriers to profit from the provision of charter service by public transit operators using federally subsidized vehicles.

The report shall also include an assessment of the factors specified in the preceding sentence within the context of not less than three communities selected by the Comptroller General.

SEC. 344. GAO STUDY ON PUBLIC TRANSIT NEEDS.

The Comptroller General of the United States shall, on a biennial basis, submit a report to the Congress evaluating the extent to which the Nation's transit needs are being adequately addressed. The report shall include:

(1) An assessment of the unmet needs for transit, as reflected by the unmet, existing maintenance, and modernization needs of transit systems throughout the Nation.

(2) A 5-year projection of the maintenance and modernization needs that will result from aging of existing equipment and facilities, including the need to overhaul or replace existing bus fleets and rolling stock used on fixed guideway systems.

(3) A 5-year projection of the need to invest in the expansion of existing transit systems to meet changing economic, commuter, and residential patterns.

(4) An estimate of the level of expenditure needed to satisfy the needs identified above.

(5) An examination of existing Federal, State, and local resources as well as private resources that are or can reasonably be expected to be made available to support public transit.

(6) The gap between the level of expenditure estimated under paragraph (4) and the level of resources available to meet such needs identified under paragraph (5).

SEC. 345. USE OF POPULATION ESTIMATES.

(a) URBAN MASS TRANSIT PROGRAM.—Section 5(a) of the Act (49 U.S.C. App. 1604(a)) is amended—

(1) in paragraph (1)(A)(i), by inserting after "Federal census" the following: "or, after the expiration of 4 and 8 years after the most recent Federal census data become available, as shown by estimates prepared by the Secretary of Commerce";

(2) in paragraph (2)(A)(i)(1), by inserting after "Federal census" the following: "or, after the expiration of 4 and 8 years after the most recent Federal census data become available, as shown by estimates prepared by the Secretary of Commerce"; and

(3) in paragraph (2)(A)(ii)(1), by inserting after "Federal census" the following: "or, after the expiration of 4 and 8 years after the most recent Federal census data become available, as shown by estimates prepared by the Secretary of Commerce".

(b) BLOCK GRANTS.—Section 9(d)(1) of the Act (49 U.S.C. App. 1607a(d)(1)) is amended by inserting after "Federal census" the following: "or, after the expiration of 4 and 8 years after the most recent Federal census data become available, as shown by estimates prepared by the Secretary of Commerce".

(c) FORMULA GRANT PROGRAM FOR AREAS OTHER THAN URBANIZED AREAS.—Section 18(a) of the Act (49 U.S.C. App. 1614(a)) is amended in the second sentence by inserting after "Federal census" the following: "or, after the expiration of 4 and 8 years after the most recent Federal census data become available, as shown by estimates prepared by the Secretary of Commerce".

SEC. 346. SECTION 9B—TECHNICAL AMENDMENT.

Section 9B(a) of the Act (49 U.S.C. App. 1607a-2(a)) is amended by striking "subsections (b) and (c) of".

SEC. 347. USE OF CENSUS DATA.

For fiscal year 1992, the Secretary of Transportation shall use data from the 1990 Federal census, to the extent practicable, in determining the allocation of funds under sections 9, 16(b)(2), and 18 of the Act. The Secretary of Transportation and the Secretary of Commerce shall coordinate efforts to expedite the availability of census data for such use and to ensure that census data is collected and prepared in a form that is appropriate to the needs of the Department of Transportation. The Secretary of Transportation shall notify, in writing, the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of actions taken pursuant to this subsection not later than 9 months following the date of enactment of this Act.

TITLE IV—PRIVATE PROPERTY RIGHTS

SEC. 401. PRIVATE PROPERTY RIGHTS ACT.

(a) SHORT TITLE.—This section may be cited as the "Private Property Rights Act".

(b) DEFINITIONS.—As used in this section:

(1) The term "agency" means all executive branch agencies, including any military department of the United States Government, any United States Government corporation, United States Government controlled corporation, or other establishment in the Executive Branch of the United States Government.

(2) The term "taking of private property" means an activity wherein private property is taken such that compensation to the owner of that property is required by the Fifth Amendment to the Constitution of the United States.

(c) PROTECTION OF PRIVATE PROPERTY.—

(1) No regulation promulgated after the date of enactment of this section by any agency shall become effective until the issuing agency is certified by the Attorney General to be in compliance with Executive Order 12630 or similar procedures to assess the potential for the taking of private property in the course of Federal regulatory activity, with the goal of minimizing such where possible.

(2) Upon receipt of guidelines proposed by an agency for compliance with the procedures referenced in paragraph (1), the Attorney General shall, in a reasonably expeditious manner, either approve such guidelines, or notify the head of such agency of any revisions or modification necessary to obtain approval.

(d) JUDICIAL REVIEW.—

(1) Judicial review of actions or asserted failures to act pursuant to this section shall be limited to whether the Attorney General has certified the issuing agency is in compliance with Executive Order 12630 or similar procedures, such review to be permitted in the same forum and at the same time as the issued regulations are otherwise subject to judicial review. Only persons adversely affected or grieved by agency action shall have standing to challenge that action as contrary to this section. In no event shall such review include any issue for which the United States Claims Court has jurisdiction.

(2) Nothing in this subsection shall affect any otherwise available judicial review of agency action.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nomination: Calendar Order No. 204, Ivan Selin, to be a member of the Nuclear Regulatory Commission.

I further ask unanimous consent that the nominee be confirmed; that any statements appear in the RECORD as if read; that the motion to reconsider be laid upon the table; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

NUCLEAR REGULATORY COMMISSION

Ivan Selin, of the District of Columbia, to be a member of the Nuclear Regulatory Commission for the term of 5 years expiring June 30, 1996.

STATEMENT ON THE NOMINATION OF IVAN SELIN

Mr. CHAFEE. Mr. President, I rise today in support of the nomination of Dr. Ivan Selin as a Commissioner of the Nuclear Regulatory Commission. Dr. Selin is an extraordinary individual who comes to us with a rather extensive list of achievements, which is a testimony to the enormous capabilities

of this man who will serve the administration and, indeed the Nation with great honor and distinction. In 1960, Dr. Selin received the distinction of a Ph.D. from Yale University in electrical engineering. In 1960–61 he was a Fulbright scholar, and in 1962 he received the highest honors in sciences from the University of Paris in mathematics. From 1960–65, Dr. Selin was a research engineer at the Rand Corp. where he divided his efforts between national security issues and research material in statistical communications theory. He served as Chairman of the Military Economic Advisory Panel to the Director of Central Intelligence from 1978 to 1989, and a member from 1979 to 1989, and chairman 1988 to 1989 of the Board of Governor's of the United Nations Associations. Additionally he was a member of the Advisory Board of the U.S.S.R. and Eastern Europe at the National Academy of Sciences. Dr. Selin was sworn in as Under Secretary of State for Management on May 23, 1989, where he now serves as the principal adviser to the Secretary of State on all matters involving the allocation of State Department resources in support for the President's foreign policy objectives. Prior to joining the State Department, Dr. Selin was the chairman of the board of American Management Systems, Inc., a very successful company. He speaks six languages and is married to the lovely former Nina Cantor.

Mr. President, Dr. Selin's experiences from his previous positions both in the private and the public sectors, make him an exceptionally well qualified nominee to be the Commissioner of the Nuclear Regulatory Commission. It is my opinion that Dr. Selin possesses the unique qualifications required for a commissioner of this agency. Dr. Selin stated in his testimony before the Senate Committee on Environment and Public Works, that he would see his duty as that of assuring that existing nuclear powerplants are operated safely and with proper regard for national security and environmental issues and that it would especially be his responsibility to assure that when and if nuclear powerplants are built they are also constructed and operated with public health and safety, national security, and environmental protection as the paramount considerations.

America has entered an age where energy dependence is at the forefront of concern. The Nuclear Regulatory Commission is the underlying agency which oversees the maintenance and operations of all nuclear facilities and it is with great pleasure that I hear such enthusiasm for the environment and the concerns of the American people expressed by this nominee.

Therefore, Mr. President, it is without hesitation that I wholeheartedly support the nomination of Dr. Selin by the President to be a Commissioner of the Nuclear Regulatory Commission and encourage my fellow colleagues to join me in approving this most deserving nominee.

LEGISLATIVE SESSION

The PRESIDENT pro tempore. Under the previous order, the Senate will now return to legislative session.

EXPORT CONTROLS ON COMPONENTS OF CHEMICAL WEAPONS MESSAGE FROM THE PRESIDENT—PM 56

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

1. On November 16, 1990, in Executive Order No. 12735, I declared a national emergency under the International Emergency Economic Powers Act ("IEEPA") (50 U.S.C. 1701, *et seq.*) to deal with the threat to the national security and foreign policy of the United States caused by the proliferation of chemical and biological weapons. In that order I directed the imposition of export controls on goods, technology, and services that can contribute to the proliferation of chemical and biological weapons and delivery systems. I also directed the imposition of sanctions on foreign persons and foreign countries involved in chemical and biological weapons proliferation activities under specified circumstances.

2. I issued Executive Order No. 12735 pursuant to the authority vested in me as President by the Constitution and laws of the United States, including IEEPA, the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the United States Code. At that time I also submitted a report to the Congress pursuant to section 204(b) of IEEPA (50 U.S.C. 1703(b)). Section 204 of IEEPA requires follow-up reports, with respect to actions or changes, to be submitted every 6 months. This report is submitted in compliance with that requirement.

3. Since the issuance of Executive Order No. 12735, the United States Government has implemented additional export controls under the Enhanced Proliferation Controls Initiative (EPCI), announced on December 13, 1990. Three provisions implementing EPCI and Executive Order No. 12735 amend the Export Administration Regulations and were published in the *Federal Register* (56 FR 10756–10770, March 13, 1991), copies of which are attached. These regulations impose additional controls on exports that would assist a country in acquiring the capability to develop, produce, stockpile, deliver, or use chemical or biological weapons or ballistic missiles. The first two regulations were issued in interim form for public comment and implemented immediately. The third regulation was issued in proposed form for public comment.

The three regulations can be described as follows:

The first regulation expands from 11 to 50 the number of chemical weapons precursors whose export is controlled by the United States Government to all countries except the 20-member Australia Group of countries that cooperate against chemical and biological weapons proliferation and the NATO member countries. Prior to this regulation the United States had controlled the 39 additional chemical weapons precursors only to Iran, Iraq, Syria, and Libya, and the four embargoed countries of Cuba, Vietnam, Cambodia, and North Korea.

The second regulation imposes a requirement for individual validated licenses for export of certain chemical and biological weapons-related dual-use equipment to 28 designated destinations.

The third regulation will impose a requirement for individual validated licenses where an exporter knows or is informed by the United States Government that any export is destined for the design, development, production, or use of chemical or biological weapons or missiles. This regulation also will impose an individual validated license requirement for U.S. persons who knowingly provide assistance to such a project, as well as for U.S. person participation in the design, construction, or export of whole chemical plants that make chemical weapons precursors.

The United States Government, in bilateral contacts, at the Australia Group meetings of December 1990 and May 1991, and at the Missile Technology Control Regime (MTCR) partners meeting of March 1991, has pursued negotiations with foreign governments to persuade them to adopt measures comparable to those the United States has imposed. At the May 1991 Australia Group meeting, the members agreed that by the next Australia Group meeting in December 1991 they would place controls on the export of all 50 chemical weapons precursors identified by the Group. They also agreed in principle to control the export of dual-use chemical weapons-related equipment. The United States Government is seeking greater harmonization of national export control laws, particularly in the areas of chemical and biological weapons-related equipment, including whole chemical plants, and curbs on citizen proliferation activities and end-user controls. At the MTCR partners meeting, significant progress was made toward adopting an updated annex of controlled missile-related technologies. The MTCR

partners also agreed to consider further harmonization of controls and implementation procedures. We will continue to pursue efforts to obtain foreign adoption of comparable measures.

An interagency chemical and biological weapons sanctions working group chaired by the Department of State has been established to evaluate intelligence and identify potentially sanctionable chemical or biological weapons activity that has taken place since November 16, 1990. This group has met and vetted information on potentially sanctionable activities but has not completed its analysis. The Administration has not as yet made any sanctions determinations but is reviewing potential sanctions cases.

On May 13, 1991, I announced a further U.S. initiative aimed at completing a comprehensive global chemical weapons ban in the Geneva Conference on Disarmament within 12 months. The initiative contains a series of concrete, forward-looking proposals that we believe will help inspire other governments and make this result possible.

In addition, on May 29, 1991, I announced a Middle East arms control initiative intended to curb the spread of chemical and biological weapons as well as conventional arms, missiles, and nuclear weapons. With regard to chemical and biological weapons, the initiative calls for the establishment of guidelines for restraints on transfers of conventional arms, weapons of mass destruction, and associated technology. It calls for all states in the Middle East to commit to becoming original parties to the Chemical Weapons Convention and for confidence-building measures by regional states. The initiative also calls for strengthening the 1972 Biological Weapons Convention through full implementation of its provisions, an improved mechanism for information exchange, and regional confidence-building measures.

4. The proliferation of chemical and biological weapons continues to constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. I shall continue to exercise the powers at my disposal, including export controls and sanctions, and will continue to report periodically to the Congress on significant developments, pursuant to 50 U.S.C. 1703(c).

GEORGE BUSH.

THE WHITE HOUSE, *June 21, 1991.*

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1458. A communication from the Director for Administration and Management, Office of the Secretary of Defense, transmitting, pursuant to law, notice that the Defense Nuclear Agency intended to exercise the authority for exclusion of the clause concerning the examination of records by the Comptroller General; to the Committee on Armed Services.

EC–1459. A communication from the Director for Assistant Secretary of Defense (Production and Logistics), transmitting, pursuant to law, a report entitled "Department of the Army Report on Cleanup of the Rocky Mountain Arsenal"; to the Committee on Armed Services.

EC–1460. A communication from the Director for Administration and Management, Office of the Secretary of Defense, transmitting, pursuant to law, a report setting forth the financial condition and operating results of the Working Capital Funds of the Department of Defense for fiscal year 1990; to the Committee on Armed Services.

EC–1461. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, a Presidential memorandum relating to the end strength level of United States armed forces in Japan; to the Committee on Armed Services.

EC–1462. A communication from the Acting Secretary of the Navy, transmitting, pursuant to law, the Naval Medical Research and Development Command's C.W. "Bill" Young Marrow Donor Recruitment and Research Program Report; to the Committee on Armed Services.

EC–1463. A communication from the Secretary of Defense, transmitting a draft of proposed legislation to streamline the facilities infrastructure of the United States Army Crops of Engineers, and for other purposes; to the Committee on Armed Services.

EC–1464. A communication from the Acting Secretary of the Treasury, transmitting, pursuant to law, the Department's 1991 report on intermarket coordination; to the Committee on Banking, Housing, and Urban Affairs.

EC–1465. A communication from the Secretary of Transportation, transmitting a draft of proposed legislation to authorize appropriations for the Coast Guard for fiscal years 1992 and 1993, and for other purposes; to the Committee on Commerce, Science, and Transportation.

EC–1466. A communication from the Assistant Secretary of Energy (Fossil Energy), transmitting, pursuant to law, notice of a delay in the submission of the quarterly report on the Strategic Petroleum Reserve; to the Committee on Energy and Natural Resources.

EC–1467. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC–1468. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC–1469. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC–1470. A communication from the Administrator of General Services, transmitting, pursuant to law, an informational copy of a proposed prospectus for the National Archives and Records Administration, Philadelphia, Pennsylvania; to the Committee on Environment and Public Works.

EC–1471. A communication from the Administrator of the Drug Enforcement Adminstration and the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, a report entitled "Guidelines for the Cleanup of Clandestine Drug Laboratories"; to the Committee on Environment and Public Works.

EC–1472. A communication from the Chairman of the United States Advisory Commission on Public Diplomacy, transmitting, pursuant to law, a report on the United States Information Agency and the public diplomacy activities of the United States Government; to the Committee on Foreign Relations.

EC–1473. A communication from the Attorney General of the United States, transmitting a draft of proposed legislation to amend the Foreign Agents Registration Act of 1938, as amended; to the Committee on Foreign Relations.

EC–1474. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the quarterly report concerning human rights activities in Ethiopia for the period January 15–April 14, 1991; to the Committee on Foreign Relations.

EC–1475. A communication from the Secretary of Labor, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Labor, for the period October 1, 1990 to March 31, 1991; to the Committee on Governmental Affairs.

EC–1476. A communication from the Administrator of General Services, transmitting a draft of proposed legislation to amend the Federal Property and Administrative Services Act of 1949 to authorize executive agencies to establish more than one supply source for a particular commodity or service; to the Committee on Governmental Affairs.

EC–1477. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Department of Veterans' Affairs, for the period October 1, 1990 to March 31, 1991, and the Department's management report on actions taken in response to audit recommendations; to the Committee on Governmental Affairs.

EC–1478. A communication from the Executive Director of the John C. Stennis Center for Public Service, transmitting, pursuant to law, the report on the activities of the Center for calendar year 1990; to the Committee on Governmental Affairs.

EC–1479. A communication from the Secretary of Housing and Urban Development, transmitting a draft of proposed legislation to amend provisions of the Bankruptcy Code governing the powers of a bankruptcy court and the effect of automatic stays as they related to certain multifamily liens insured or held by the Secretary of Housing and Urban Development or the Secretary of Agriculture; to the Committee on the Judiciary.

EC–1480. A communication from the Assistant Attorney General (Legislative Affairs), transmitting a draft of proposed legislation to amend title 28, United States Code, with respect to the admissibility in evidence of foreign records of regularly conducted activity; to the Committee on the Judiciary.

EC–1481. A communication from the Secretary of Education, transmitting a draft of proposed legislation to amend the Higher

Education Act of 1965 to target Federal grant assistance of the lowest-income students; to reward excellence and success in education, to enhance choice and flexibility, to promote greater accountability, to reduce waste and abuse in the use of public funds, to extend the Act, and for other purposes; to the Committee on Labor and Human Resources.

EC–1482. A communication from the Secretary of Education, transmitting, pursuant to law, notice of final priority—Developmental, Bilingual Education and Special Alternative Instruction Programs; to the Committee on Labor and Human Resources.

EC–1483. A communication from the Secretary of Education, transmitting, pursuant to law, notice of final priorities—Training Programs for Educators—Innovative Alcohol Abuse Education Programs; to the Committee on Labor and Human Resources.

EC–1484. A communication from the Secretary of Education, transmitting, pursuant to law, interim final regulations with invitation to comment—Disability and Rehabilitation Research: General Provisions, Research Fellowships; to the Committee on Labor and Human Resources.

EC–1485. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the status of budget authority that was proposed for rescission by the President in his third special impoundment message for fiscal year 1991; pursuant to the order of January 30, 1975, as modified by the order of April 4, 1986, referred jointly to the Committee on Appropriations, the Committee on the Budget, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Foreign Relations.

EC–1486. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the fourth report on United States Costs in the Persian Gulf Conflict and Foreign Contributions to Offset Such Costs; to the Committee on Armed Services.

EC–1487. A communication from the Assistant Secretary of Defense (Production and Logistics), transmitting, pursuant to law, a report on the ability of the domestic industrial base of textile and apparel manufacturers to support mobilization of the Department of Defense; to the Committee on Armed Services.

EC–1488. A communication from the Acting Under Secretary of Defense (Acquisition), transmitting, pursuant to law, certification with respect to certain major defense acquisition programs; to the Committee on Armed Services.

EC–1489. A communication from the Director of the Office of Thrift Supervision, transmitting, pursuant to law, the first annual report of the Office on the preservation of minority savings institutions; to the Committee on Banking, Housing, and Urban Affairs.

EC–1490. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on appropriations legislation; to the Committee on the Budget.

EC–1491. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on direct spending or receipts legislation; to the Committee on the Budget.

EC–1492. A communication from the Secretary of Energy, transmitting, pursuant to law, a report on a project negotiated under the Clean Coal Technology Demonstration Act; to the Committee on Energy and Natural Resources.

EC–1493. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC–1494. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Environmental Protection: Meeting Public Expectations With Limited Resources"; to the Committee on Environment and Public Works.

EC–1495. A communication from the Department of Labor, transmitting, pursuant to law, the quarterly report on the expenditure and need for worker adjustment assistance training funds under the Trade Act; to the Committee on Finance.

EC–1496. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the patterns of expenditures of children; to the Committee on Finance.

EC–1497. A communication from the Secretary of the Postal Rate Commission, transmitting, pursuant to law, an advanced notice of proposed rulemaking; to the Committee on Governmental Affairs.

EC–1498. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–40 adopted by the Council on June 4, 1991; to the Committee on Governmental Affairs.

EC–1499. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9–41 adopted by the Council on June 4, 1991; to the Committee on Governmental Affairs.

EC–1500. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of the D.C. Act 9–42 adopted by the Council on June 4, 1991; to the Committee on Governmental Affairs.

EC–1501. A communication from the Secretary of Commerce, transmitting a draft of proposed legislation to amend Title 13, United States Code, to repeal requirements for the collection and publication of statistics on cotton ginnings, and for other purposes; to the Committee on Governmental Affairs.

EC–1502. A communication from the Director of the Office of National Drug Control Policy, Executive Office of the President, transmitting a draft of proposed legislation to augment and clarify law enforcement agency roles in ordering aircraft to land and vessels to bring to, to enable improved money laundering investigations, to promote drug testing in Federal and State criminal justice systems, and for other law enforcement improvements; to the Committee on the Judiciary.

EC–1503. A communication from the Secretary of Health and Human Services, transmitting a draft of proposed legislation to reorganize the Alcohol, Drug Abuse, and Mental Health Administration; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources without amendment:

H.R. 690. A bill to authorize the National Park Service to acquire and manage the Mary McLeod Bethune Council House National Historic Site, and for other purposes (Rept. No. 102–88).

H.R. 749. A bill to authorize the Secretary of the Interior to accept a donation of land for addition to the Ocmulgee National Monument in the State of Georgia (Rept. No. 102–89).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources with amendments:

H.R. 904. A bill to direct the Secretary of the Interior to prepare a national historic landmark theme study on African-American history (Rept. No. 102–90).

H.R. 1143. A bill to authorize a study of nationally significant places in American labor history (Rept. No. 102–91).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BENTSEN, from the Committee on Finance:

Mary Catherine Sophos, of California, to be a Deputy Under Secretary of the Treasury.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 1350. A bill to formulate a plan for the management of natural and cultural resources on the Zuni Indian reservation, on the lands of the Ramah Band of the Navajo Tribe, and in other areas within the Zuni River watershed and upstream from the Zuni Indian Reservation, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. DOMENICI (for himself, Mr. BINGAMAN, Mr. JOHNSTON, Mr. WALLOP, Mr. FORD, Mr. CRAIG, Mr. SIMON, Mr. MOYNIHAN, Mr. GORTON, Mr. SEYMOUR, Mr. D'AMATO, and Mr. SYMMS):

S. 1351. A bill to encourage partnerships between Department of Energy Laboratories and educational institutions, industry, and other Federal laboratories in support of critical national objectives in energy national security, the environment, and scientific and technological competitiveness; to the Committee on Energy and Natural Resources.

By Mr. DODD:

S. 1352. A bill to place restrictions on United States assistance for El Salvador; to the Committee on Foreign Relations.

By Mr. LIEBERMAN (for himself, Mr. REID, and Mr. DURENBERGER):

S. 1353. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to ensure that hazardous pesticides are promptly removed from the market and to ensure that the health of all citizens, particularly our

children, is protected, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HARKIN:

S. 1354. A bill to amend title II of the Social Security Act to increase the amount of remuneration an election official or worker may receive and be excluded from an agreement between a State and the Secretary providing for the extension of benefits under such title to State employees; to the Committee on Finance.

By Mr. SIMON:

S. 1355. A bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to authorize funds received by States and units of local government to be expended to improve the quality and availability of DNA records; to authorize the establishment of a DNA identification index; and for other purposes; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN (for himself and Mr. Domenici):

S. 1350. A bill to formulate a plan for the management of natural and cultural resources on the Zuni Indian reservation, in the lands of the Ramah Band of the Navajo Tribe, and in other areas within the Zuni River watershed and upstream from the Zuni Indian reservation, and for other purposes; to the Select Committee on Indian Affairs.

ZUNI RIVER WATERSHED ACT

• Mr. BINGAMAN. Mr. President, for decades, the Zuni Pueblo and Ramah Band of the Navajo Tribe have watched their land and history erode away. Every year, topsoil, washed down from mountains and mesas, is carried by the spring runoff and floods. This valuable topsoil is then deposited within the Zuni Pueblo's Black Rock dam, causing the dam to fill with silt. The dam's ability to hold floodwaters is seriously compromised.

The damage is not confined to the loss of topsoil and the creation of a serious safety problem. Zuni history is also being washed away. Year after year, expanding arroyos threaten Zuni archeology. Nearly 2,000 archeological sites have been damaged as a result of erosion.

The destructive erosion goes back to the era of historic logging and overgrazing fostered by various Government policies and decisions. Since that time, land management practices have changed, but the Zuni and Ramah people are left with a legacy of barren landscapes.

The bill I am introducing will change this legacy. My bill will produce a plan for the management of the watershed that will not only prevent further degradation, but will identify what can be done to rehabilitate these lands. The bill fosters the voluntary cooperation among the Zuni Indian Pueblo, the Ramah Band, the State of New Mexico, the Soil Conservation Service, the Forest Service, the Bureau of Indian Affairs and private land owners. All people within the Zuni River watershed should benefit from a cooperative effort to restore these affected lands. This cooperative effort will ensure that the severe erosion we have seen in the past does not occur in the future.

I am pleased that my colleague Senator DOMENICI is cosponsoring this bill. I urge my other colleagues to join me in supporting this legislation to conserve the Zuni River watershed for the benefit of present and future generations.

Mr. President, I ask unanimous consent that the text of the bill be placed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1350

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Zuni River Watershed Act of 1991".

SEC. 2. FINDINGS.

Congress finds that—

(1) over the past century, extensive damage has occurred in the Zuni River watershed, including—

(A) severe erosion of agricultural lands;

(B) reduced productivity of renewable resources; and

(C) loss of nonrenewable resources;

(2) the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation includes—

(A) Federal land;

(B) State land;

(C) Zuni Indian Trust land;

(D) Navajo Tribal Trust land;

(E) Ramah Band of the Navajo Tribe Trust land;

(F) individual Indian allotment lands; and

(G) private land;

(3) the Department of Agriculture, the Bureau of Indian Affairs, the Zuni Indian Tribe, and the Ramah Band of the Navajo Tribe agree that corrective measures are required to prevent continued degradation of natural and cultural resources throughout the Zuni River watershed;

(4) with the passage of the Zuni Land Conservation Act of 1990 (Public Law 101-486), the Zuni Indian Tribe has the ability to take these corrective measures within the Zuni Indian Reservation;

(5) the implementation of a watershed management plan within the Zuni Indian Reservation will be ineffective without the implementation of a corresponding plan for the management of the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation;

(6) most of the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation is within the Cibola National Forest or Indian Trust lands;

(7) the Secretary of Agriculture, acting through the Chief of the Forest Service and the Chief of the Soil Conservation Service, and the Secretary of the Interior, acting through the Commissioner of Indian Affairs, have the technical expertise to formulate a plan for the management of the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation on Federal, State, Indian, and private lands;

(8) an effective watershed management plan for the Zuni River watershed requires voluntary cooperation among the—

(A) Soil Conservation Service;

(B) Forest Service;

(C) Bureau of Indian Affairs;

(D) Zuni Indian Tribe;

(E) Ramah Band of the Navajo Tribe;

(F) State of New Mexico; and

(G) private landowners; and

(9) all persons living within the Zuni River watershed will benefit from a cooperative effort to rehabilitate and manage the watershed.

SEC. 3. STUDY, PLAN, AND REPORT.

(a) STUDY AND PLAN.—

(1) IN GENERAL.—The Secretary of Agriculture, acting through the Chief of the Soil Conservation Service and the Chief of the Forest Service, and the Secretary of the Interior, acting through the Commissioner of Indian Affairs, shall—

(A) conduct a study of the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation, as depicted on the map entitled "Zuni River Watershed" numbered —— and dated ————, 1991, which shall be on file and available for public inspection in the—

(i) New Mexico State Office of the Soil Conservation Service; and

(ii) Albuquerque Area Office of the Bureau of Indian Affairs; and

(B) prepare a plan for watershed protection and rehabilitation on both public and private lands.

(2) PLAN COMPONENTS.—The plan required by paragraph (1)(B) shall include—

(A) a watershed survey describing current resource conditions;

(B) recommendations for watershed protection and rehabilitation on both public and private lands;

(C) management guidelines for maintaining and improving the natural and cultural resource base on both public and private lands;

(D) a system for monitoring resource conditions that can be coordinated with the system developed by the Zuni Indian Tribe;

(E) proposals for voluntary cooperative programs, that implement and administer the plan required by paragraph (1)(B), among—

(i) the Department of Agriculture;

(ii) the Department of the Interior;

(iii) the Zuni Indian Tribe;

(iv) the Ramah Band of the Navajo Indian Tribe;

(v) the State of New Mexico;

(vi) private landowners within the portion of the Zuni River watershed that is upstream from the Zuni Indian Reservation; and

(vii) other public or private agencies;

(F) a project plan that—

(i) outlines tasks necessary to implement the plan required by paragraph (1)(B);

(ii) recommends completion dates; and

(iii) estimates the costs of the tasks; and

(G) a monitoring plan that—

(i) outlines tasks for monitoring and maintaining the watershed; and

(ii) estimates the annual cost of performing the tasks.

(b) REPORT.—Not later than 2 years after the date that funds are made available for the study and the preparation of the plan as required by subsection (a)(1), the Secretary of Agriculture and the Secretary of the Interior shall submit to the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives a written report containing—

(1) the full text of the study and the plan; and

(2) an executive summary of the study and the plan.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.●

By Mr. DOMENICI (for himself, Mr. BINGAMAN, Mr. JOHNSTON, Mr. WALLOP, Mr. FORD, Mr. CRAIG, Mr. SIMON, Mr. MOYNIHAN, Mr. GORTON, Mr. SEYMOUR, Mr. D'AMATO, and Mr. SYMMS):

S. 1351. A bill to encourage partnerships between Department of Energy Laboratories and educational institutions, industry, and other Federal laboratories in support of critical national objectives in energy, national security, the environment, and scientific and technological competitiveness; to the Committee on Energy and Natural Resources.

DEPARTMENT OF ENERGY SCIENCE AND TECHNOLOGY PARTNERSHIP ACT

Mr. DOMENICI. Mr. President, I rise today to introduce a bill on behalf of myself, Senators BINGAMAN, JOHNSTON, WALLOP, CRAIG, SIMON, MOYNIHAN, GORTON, SEYMOUR, D'AMATO, and SYMMS.

These Senators names, I read today because in each case within their States is a major Department of Energy National Laboratory. There are a couple of others who are not yet cosponsors but I am sure they will be as soon as they have a chance to review this legislation.

I am excited about this legislation because I believe the Department of Energy has more science and technology available than any other institution in the world. Most of it was developed because of their particular mission with reference to either nuclear energy or nuclear devices or atomic energy or atomic devices. In the meantime, what we have are national treasures; nearly thousands of scientists with support teams are in these laboratories, including Los Alamos and Sandia in the State of New Mexico.

The time has come to say to the Secretary of Energy, we give you the authority and direct you to use these national laboratories and the science and technology that is encapsulated therein for purposes beyond the current mission of the Department's laboratories. We believe the time has come to ask these laboratories to help American industry, large and small, to better compete. We believe the time has come to ask them to help our universities with joint partnership type academic efforts, thus through the synergy of the two making our science and technology even better.

We think the time has come to ask them to ask the private sector and academia and other agencies of the Federal Government to do a better job in energy efficiency. We think partnerships ought to be entered into in the private sector and academia, moving in energy efficiency and alternative energies. We think the time has come for high-performance computing. A number of them are absolute experts. We think they ought to be turned loose in partnership arrangements to use the full strength of this marvelous specialty of computing to move ahead our competitive advantages and, yes, even to move ahead in some of the fields we are so worried about that have to do with environment, that have to do with various things such as global climate change.

We also believe the time has come to let these laboratories and scientists therein enter into partnership arrangements with the private sector and others to solve environmental problems that we all know are there and to come up with new ideas so as to mitigate in the future environmental problems as we develop new kinds of industrial processes and the like.

Obviously, they are already involved in some of these areas, like human health. But we want to make it absolutely clear by this legislation that the Secretary is directed to involve, through partnership arrangements and otherwise, these laboratories and their expertise in human health, including the mapping of the human geno and other new and yet untried, but certainly to evolve the science of health and wellness of the future.

We believe advanced manufacturing technologies, including those that may affect energy, energy efficiency, environmental protection ought to be the subject matter of partnership and cooperative arrangements between these laboratories and America's business and industry, large and small, and, yes, America's universities also, so that again you can combine the strength of the two and move more rapidly to solve problems, all for America's future.

Education and training. Clearly, when you have more scientists and engineers than any other institution in the world, more Ph.D.'s working for laboratories than any in the world, we ought to ask them to involve themselves in training and education and not have it anything other than upfront activity that thay have been chartered to do, authorized and directed to do.

So that is what this bill is going to do. It will do some other things. It is not going to cost any money. But what it will do is broaden the scope and the horizon and, yes, the jurisdiction and ability of thousands of the best scientists of the world who kept America free, kept America always out front in nuclear activities and prevented a nuclear holocaust and in the process accumulated the best scientists in the world. We want them to apply that expertise to many areas of endeavor in America, to give us more competitiveness, to solve some of the problems of the future, because certainly with science moving ahead rapidly we want to be the first in many of these areas to keep America always on the cutting edge.

I am confident that for those who want to move technology and transfer technology, they will agree, when this bill is finally before the Senate, this is another way to move technology from the minds of brilliant people and from machines and enterprises in laboratories to the marketplace of application. A good way is to create partnerships with businesses and laboratories, experts, and that is what we are going to try to do.

I send the bill to which I have alluded to the desk and ask that it be properly referred.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, I am pleased to support Senator DOMENICI in introducing the technology partnership legislation he has developed with the Department of Energy. The partnership concept is a very useful one for addressing technology issues. I have made use of it in my own legislation, S. 979, that is before the Energy and Natural Resources Committee. That bill is aimed at research and development on critical technologies identified in the most recent National Critical Technologies Report.

I look forward to working with the committee to further develop the ideas in the Department of Energy, Science, and Technology Partnership Act. This bill could become the basis for a number of initiatives for the Department of Energy within the context of a government-wide effort to improve U.S. technological competitiveness. If America is to keep ahead of international competitors, it needs to nurture its technological edge.

I am committed to making sure that high-payoff enterprises like the DOE laboratories remain strong and vital, even in time of tight Federal budgets. One way in which this can happen is to encourage the national laboratories to work even more effectively with universities and industry. Each type of institution has its own special strengths. The partnerships contemplated under this bill can facilitate this kind of creative interaction and provide the national laboratories with the new information the laboratories need to make their efforts relevant to commercial requirements.

Mr. JOHNSTON. Mr. President, I congratulate Senator DOMENICI for introducing this legislation today. I know he has been working with the Department of Energy and other Senators to develop this bill. He and Senator BINGAMAN have been the leaders in the Senate in their concern to find new ways that the Nation can be served by the national laboratory system we have built in this country. I know both of them are ready to join the chairman, the ranking member, and other mem-

bers of the Committee on Energy and Natural Resources to devise a new charter for this laboratory system that will serve the Nation even better in the future. This bill will provide the vehicle for this effort.

This legislation can serve as an enabling statute for a new role for the Department of Energy in research and development. The great technological challenges the Nation faces have many facets that fit well with the capabilities of the Department of Energy. Energy supply development, energy efficiency, renewable energy, alternative fuels, and nuclear energy are the obvious areas of challenge where the Department continues to be active.

The Department of Energy is also the home of much of the Federal support for basic research in the sciences in the United States. This has been true over many, many years, long before the superconducting super collider was even thought of. Today the Department operates the largest and most valuable machines of basic science in the world.

The Department of Energy designs, develops, tests, builds, and maintains the weapons that comprise the Nation's nuclear deterrent.

These are all important roles that will continue in the future. But the world that gave rise to these specific elements of the Department of Energy charter is changing, and there are departmental capabilities that can be put to wider use. The Department of Energy has built the most powerful and advanced lasers. The Department's laboratories are the world leaders in the development of supercomputers. These laboratories are helping to lead the effort to map the human genome. High-strength alloys and other high-performance structural materials have been developed in DOE national laboratories and applied directly to problems prior to commercial application.

These laboratories employ over 16,000 researchers with advanced degrees in science and engineering. More than 50 Nobel Prizes have been awarded for work performed at DOE national laboratories or that drew upon national laboratory contributions. Since 1985, over 140 spinoff companies have been formed based on technologies developed at the DOE national laboratories.

This imposing national asset could not be constructed from scratch in today's budget climate. We have these laboratories as a gift from the time when the Nation invested heavily in the infrastructure of science for defense. We need to apply the tools these laboratories make available to the solution of today's problems.

This bill will help us begin this debate in the committee. I'm looking forward to the hearings we will have. I know Admiral Watkins agrees with the importance of this legislation. It will be a major issue for us as well.

By Mr. DODD:

S. 1352. A bill to place restrictions on United States assistance for El Salvador; to the Committee on Foreign Relations.

EL SALVADOR PEACE, SECURITY, AND JUSTICE ACT OF 1991

• Mr. DODD. Mr. President, I rise for the purpose of introducing legislation relating the administration's fiscal 1992 military aid request for El Salvador. This legislation, except for one major difference, is virtually identical to the legislation approved by the Senate last October.

My colleagues will recall that the framework which we established last fall was adopted by a very strong vote, 74 to 25. And subsequently the administration's efforts to modify it failed by vote of 58 to 39.

That effort was designed to use the military aid program as a way of moving the negotiating process forward and maintaining the active involvement of the United Nations in it.

Up front the legislation required the United States to withhold 50 percent of the $85 million in military aid requested for fiscal 1991. Additionally, it withheld 50 percent of the military aid pipeline. Then through a series of incentives and disincentives, the legislation sought to convince both sides that there was more to be gained from a negotiated settlement than from continuing the war effort.

This is, I believe, a sound approach and one which needs to be pursued in terms of the fiscal 1992 military aid request for El Salvador. Accordingly my proposal is designed to do just that, repeat the Senate-adopted provision of last October except for one major change.

The change is this: Under the terms of the legislation I am introducing today, any decision by the President to release all the military aid funds, or alternatively to withhold all of them, would be subject to a 15-day review by the appropriate committees of the Congress pursuant to the standard reprogramming procedure.

In other words, this provision keeps the foreign policy committees and the appropriations committees in the decisionmaking loop and allows for a Presidential finding to be overturned by a majority-supported decision of any one of these committees.

Based on our experience earlier this year, I believe the addition of this provision is essential. We gave the President maximum flexibility to release the funds and, in my opinion and in the opinion of a lot of other people, he abused that authority. Clearly, then, this authority must be circumscribed by a congressional review process, such as the one which I have included in the measure I am offering today.

Now I know, Mr. President, that there are those who will argue that we should do nothing at this point on the issue of military aid to El Salvador and they will point to the decision by our colleagues in the House to hold off legislatively until September.

I have talked to my friends in the House. They know that I respect their decision. The fact that there may be differences on timing and tactics between the House and the Senate should not be misunderstood. Keep in mind that last year that the House acted first and the Senate, not until later in the year.

I do not believe that the status quo should be left in tact on the question of military aid to El Salvador for the next 2 or 3 months. My view is that would be a mistake because it would suggest to the parties at the negotiating table that our commitment to a political settlement has been weakened.

Alternatively, I have suggested to the administration that it withdraw its fiscal 1992 military aid request and withhold obligating or spending 50 percent of the fiscal 1991 money. This would provide the greatest safeguard against "rocking the boat." And in September or October, we sit down and figure out collectively where we want to go and how to get there.

That's not acceptable to the administration. They will not withdraw the 1992 request. Nor will they commit to withholding the $42.5 million in 1991 funds until after the Labor Day.

In view of these circumstances, Mr. President, I believe there is no choice but to proceed with the kind of legislative effort that I have outlined.

I ask unanimous consent that a copy of my proposed legislation be printed at this point in the RECORD, together with a summary of it.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1352

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "El Salvador Peace, Security, and Justice Act of 1991".

SEC. 2. STATEMENT OF POLICY.

United States military assistance to the Government of El Salvador shall seek three principal foreign policy objectives, as follows: (1) to promote a permanent settlement and cease-fire to the conflict in El Salvador, with the Secretary General of the United Nations serving as an active mediator between the opposing parties; (2) to foster greater respect for basic human rights and the rule of law; and (3) to advance political accommodation and national reconciliation.

SEC. 3. MAXIMUM LEVEL OF MILITARY ASSISTANCE.

Of the funds made available for United States military assistance for fiscal year 1992, not more than $85,000,000 shall be available for El Salvador.

SEC. 4. PROHIBITION OF MILITARY ASSISTANCE.

(a) PROHIBITION.—Subject to subsection (b), no United States military assistance may be furnished to the Government of El Salvador—

(1) if the President determines and reports in writing to the appropriate congressional committees that—

(A) after the President has consulted with the Secretary General of the United Nations, the Government of El Salvador has declined to participate in good faith in negotiations for a permanent settlement and cease-fire to the armed conflict of El Salvador;

(B) the Government of El Salvador has rejected or otherwise failed to support an active role for the Secretary General of the United Nations in mediating that settlement;

(C) the Government of El Salvador is not conducting a thorough and professional investigation into, and prosecution of, those responsible for the eight murders at the University of Central America on November 16, 1989, as evidenced, for example, by the high command of the Salvadoran military withholding from judicial authorities, military personnel as witnesses or information or documents that have been identified by the presiding judge in the case as potentially relevant to the investigation; or

(D) the military and security forces of El Salvador are assassinating or abducting civilian noncombatants, are engaging in other acts of violence directed at civilian targets, or are failing to control such activities by elements subject to the control of those forces; and

(2) if the appropriate congressional committees have had at least 15 days to review the President's determination under paragraph (1) in accordance with the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961.

(b) REQUIREMENT FOR RESUMPTION OF ASSISTANCE.—Assistance prohibited under subsection (a) may only be resumed pursuant to a law subsequently enacted by the Congress.

SEC. 5. WITHHOLDING OF MILITARY ASSISTANCE.

(a) IN GENERAL.—Fifty percent of the total United States military assistance allocated for El Salvador for fiscal year 1992 and 50 percent of the total United States military assistance allocated for El Salvador for previous fiscal years, which has not been obligated, expended, delivered, or otherwise made available to the Government of El Salvador, shall be withheld from obligation or expenditure (as the case may be) except as provided in subsections (b) and (c).

(b) RELEASE OF ASSISTANCE.—Subject to the provisions of sections 4, 6, and 10, United States military assistance withheld pursuant to subsection (a) may be obligated and expended only if—

(1) the President determines, in accordance with subsection (c), and reports in writing to the appropriate congressional committees that—

(A) after he has consulted with the Secretary General of the United Nations, the representatives of the FMLN—

(i) have declined to participate in good faith in negotiations for a permanent settlement and cease-fire to the armed conflict in El Salvador, or

(ii) have rejected or otherwise failed to support an active role for the Secretary General of the United Nations in mediating that settlement;

(B) the survival of the constitutional Government of El Salvador is being jeopardized by substantial and sustained offensive military actions or operations by the FMLN;

(C) proof exists that the FMLN is continuing to acquire or receive significant shipments of lethal military assistance from outside El Salvador, and this proof has been shared with the appropriate congressional committees; or

(D) the FMLN is assassinating or abducting civilian noncombatants, is engaging in other acts of violence directed at civilian targets, or is failing to control such activities by elements subject to FMLN control; and

(2) at least 15 days before any obligation or expenditure of funds is made, the appropriate congressional committees are notified in accordance with the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961.

(c) PERIOD COVERED BY PRESIDENTIAL DETERMINATION.—A determination under subsection (b) may be made only with respect to the activities of the FMLN occurring after the President's determination of January 15, 1991, pursuant to section 531(d)(2) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101-513).

(d) EXCEPTION.—Notwithstanding any other provision of law, funds withheld pursuant to subsection (a) may be disbursed to pay the cost of any contract penalties which may be incurred as a result of such withholding of funds under this subsection.

SEC. 6. CONDITION FOR TERMINATION OF ALL UNITED STATES ASSISTANCE.

(a) PROHIBITION.—Subject to subsection (b), no United States assistance may be furnished to El Salvador if the duly elected head of Government of El Salvador is deposed by military coup or decree.

(b) REQUIREMENT FOR RESUMPTION OF ASSISTANCE.—Assistance prohibited under subsection (a) may only be resumed pursuant to a law subsequently enacted by the Congress.

SEC. 7. ESTABLISHMENT OF A FUND FOR CEASE-FIRE MONITORING, DEMOBILIZATION, AND TRANSITION TO PEACE.

(a) ESTABLISHMENT OF FUND.—There is hereby established in the Treasury of the United States a fund to assist with the costs of monitoring a permanent settlement of the conflict, including a cease-fire, and the demobilization of combatants in the conflict in El Salvador, and their transition to peaceful pursuits, which shall be known as the "Demobilization and Transition Fund" (hereafter in this section referred to as the "Fund"). Amounts in the Fund shall be available for obligation and expenditure only upon notification by the President to the appropriate congressional committees that the Government of El Salvador and representatives of the FMLN have reached a permanent settlement of the conflict, including a final agreement on a cease-fire.

(b) TRANSFER OF CERTAIN MILITARY ASSISTANCE FUNDS.—Upon notification of the appropriate congressional committees of a permanent settlement of the conflict, including an agreement on a cease-fire, or on September 30, 1992, if no such notification has occurred before that date, the President shall transfer to the Fund any United States military assistance funds withheld pursuant to section 5. In addition, the President may transfer to the Fund any additional military assistance that has been allocated for El Salvador for fiscal year 1991 or fiscal year 1992 that he determines necessary to carry out the purposes of this section.

(c) USE OF THE FUND.—Notwithstanding any other provision of law, amounts in the Fund shall be available for El Salvador solely to support costs of demobilization, retraining, relocation, and reemployment in civilian pursuits of former combatants in the conflict in El Salvador, and for the monitoring of the permanent settlement and cease-fire.

(d) DURATION OF AVAILABILITY OF FUNDS.—Notwithstanding any other provision of law, amounts transferred to the Fund shall remain available until expended.

SEC. 8. STRENGTHENING CIVILIAN CONTROL OVER THE MILITARY.

In order to strengthen the control of the democratically elected civilian Government of El Salvador over the armed forces of that country, United States military assistance for any fiscal year may be delivered to the armed forces of El Salvador only with the prior approval of the duly elected President of El Salvador.

SEC. 9. SUPPORT FOR DEMOCRACY.

(a) CONTINUATION OF PROGRAM.—The Secretary of State, through agreement with the National Endowment for Democracy or other qualified organizations, shall continue to undertake programs of education, training, and dialogue for the purpose of strengthening democratic, political, and legal institutions in El Salvador.

(b) INTERNATIONAL HUMAN RIGHTS MONITORING.—The Secretary of State is authorized to cooperate fully with the United Nations Secretary General and with United Nation's efforts to implement provisions of the Human Rights Accord, which was agreed to between the Government of El Salvador and the FMLN on July 26, 1990, during the fourth session of the United Nations-mediated negotiations, and, in particular, to provide assistance in support of the deployment of the United Nations Observer Force in El Salvador.

(c) ASSISTANCE.—Of the amounts made available for economic support fund assistance for fiscal year 1992, up to $10,000,000 may be used to carry out this section and, at the direction of the Secretary of State, may be used pursuant to subsection (b) to provide assistance for the deployment or activities of the United Nations Observer Force in El Salvador.

SEC. 10. INVESTIGATION OF MURDERS.

Of the amounts made available for United States military assistance for El Salvador for fiscal year 1992, $5,000,000 may not be expended until the President certifies to the appropriate congressional committees that the Government of El Salvador has pursued all legal avenues to fully investigate, bring to trial, and obtain verdicts against—

(1) those responsible for the January 1981 deaths of the two United States land reform consultants Michael Hammer and Mark Pearlman and the Salvadoran Land Reform Institute Director Jose Rodolfo Viera;

(2) those who ordered and carried out the September 1988 massacre of ten peasants near the town of San Francisco, El Salvador;

(3) those who ordered and carried out the November 1989 murders of six Jesuit priests and their associates; and

(4) those responsible for the deaths of the ten unionists who were killed during the October 31, 1989, bombing of the FENASTRAS headquarters.

SEC. 11. REPORTING REQUIREMENTS.

The President shall, at the request of any of the appropriate congressional committees, submit a report periodically to such committee on the implementation of the provisions of this Act, including the status of the investigation into the politically motivated murders listed in section 10.

SEC. 12. DEFINITIONS.

For purposes of this Act—

(1) the term "appropriate congressional committees" means the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee

on Foreign Affairs and the Committee on Appropriations of the House of Representatives;

(2) the term "economic support fund assistance" means the assistance which is authorized to be provided under chapter 4 of part II of the Foreign Assistance Act of 1961;

(3) the term "FMLN" means the Farabundo Marti Front for National Liberation;

(4) the term "United States assistance" has the same meaning as is given to such term by section 481(i)(4) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(i)(4)) and includes United States military assistance as defined in paragraph (3); and

(5) the term "United States military assistance" means—

(A) assistance to carry out chapter 2 (relating to grant military assistance) or chapter 5 (relating to international military education and training) of part II of the Foreign Assistance Act of 1961; and

(B) assistance to carry out section 23 of the Arms Export Control Act.

SEC. 13. REPEAL.

Sections 531 of the Foreign Operations, Export Financing, and Related Programs Appropriatins Act, 1991, are repealed.●

SUMMARY OF THE EL SALVADOR PEACE, SECURITY, AND JUSTICE ACT OF 1991

Sets forth the following U.S. policy objectives with respect to El Salvador—

To promote a permanent settlement and cease-fire to the conflict through mediation by the U.N. Secretary General;

To foster greater respect by the Government of El Salvador for basic human rights and the rule of law: and

To advance political accommodation and national reconciliation.

Caps military assistance to El Salvador at $85 million for FY 1992;

Prohibits all U.S. military assistance to the Government of El Salvador if the President determines and reports to the appropriate Congressional Committees, in accordance with reprogramming procedures under Section 634A of the Foreign Assistance Act of 1961, that any of the following is the case—

The Government of El Salvador has declined to participate in good faith negotiations;

The Government of El Salvador has rejected the mediating role of the Secretary General of the UN;

The Government of El Salvador is failing to conduct a professional investigation into and prosecution of those responsible for the November 16, 1989 murders of the six Jesuits and their associates; or

The miltiary and security forces of El Salvador are assassinating or abducting civilians.

Underscores the U.S. commitment to the negotiating process by withholding 50 percent of U.S. military assistance which would otherwise be made available to the Government of El Salvador in fiscal year 1992, including any money in the pipeline from prior fiscal years, unless the President determines and reports to the appropriate Congressional Committees, in accordance with reprogramming procedures under 634A of the Foreign Assistance Act 1961, that any of the following is the case—

The FMLN has declined to participate in good faith negotiations;

The FMLN has rejected a mediating role of U.N. Secretary General;

The survival of the constitutional government of El Salvador is being jeopardized by a substantial military offensive by the FMLN;

Proof exists and has been provided to Congress that the FMLN continues to receive substantial military assistance from outside that country; or

The FMLN is assassinating or abducting civilians.

Terminates all U.S. economic and military assistance to the Government of El Salvador in the event of a military coup;

Establishes a "Fund for Ceasefire Monitoring, Demobilization and Transition to Peace", transfers military assistance withheld by the bill to the newly established fund, with the monies to be provided to El Salvador once a permanent settlement has been reached to support implementation of that settlement;

Strengthens civilian control over the military by mandating prior approval of all U.S. military assistance to the military and security forces by the civilian government;

Earmarks up to $10,000,000 in ESF funds in FY 1992 to support democratic initiatives in El Salvador, including for National Endowment for Democracy programs, and international human rights monitoring efforts through the deployment of the U.N. Observer Force in El Salvador.

Fences $5,000,000 in FY 1992 military assistance pending the investigation and trial of those responsible for the 1981 murders of the U.S. AIFLD workers, and the Salvadoran land reform activist; the 1988 San Francisco massacre; the 1989 murders of the six Jesuits and their associates; and deaths of ten trade unionists resulting from the 1989 Fenastras bombing;

Authorizes periodic reports to the Congress.

By Mr. LIEBERMAN (for himself, Mr. REID, and Mr. DURENBERGER):

S. 1353. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to ensure that hazardous pesticides are promptly removed from the market and to ensure that the health of all citizens, particularly our children, is protected, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

PESTICIDE HEALTH AND SAFETY ACT

● Mr. LIEBERMAN. Mr. President, Senator REID, Senator DURENBERGER, and I are introducing legislation today to amend the Federal Insecticide, Fungicide, and Rodenticide Act to ensure that all pesticides are clearly labeled, that hazardous pesticides are promptly removed from the market, and that the health of all citizens, especially our children is protected. In the last several years, the Environment and Public Works Committee's Subcommittee on Toxic Substances, Environmental Oversight, Research and Development, chaired by my colleague from Nevada, Senator REID, has held a number of hearings to examine the issue of pesticides in the food supply and for use in lawn care. What we heard during those hearings was unsettling in terms of the length of time it takes the U.S. Environmental Protection Agency to cancel a dangerous pesticide, how little information EPA often has regarding the potential toxic effects of chemicals, and the inadequacy with which this information is relayed to the consumer. That is why we are introducing legislation that would require EPA to provide the protection the American people deserve.

We have found that it often takes EPA 15–20 years to remove a dangerous pesticide from the market. For example, it took 17 years to have Alar removed and that was only because the manufacturer agreed to voluntarily stop selling it. Similarly, the threat of potential health effects of EBDC first came to light as far back as 1970. But its use was continued until 1989 when the major manufacturers of EBDC announced a voluntary suspension of EBDC production for use on some U.S. crops. However, EPA's review of its use on other crops is still ongoing. Furthermore, the recent revelation that some bananas grown for export to the United States were found to be contaminated with up to 10 times the legal limit of aldicarb, brings to mind the fact that this pesticide has been undergoing special review by the EPA for over 5 years. Although thousands of people suffered from nausea, vomiting, and diarrhea after eating watermelon that had been sprayed with aldicrab in the mid-1980's, its use on other crops has continued while EPA continues to debate the significance of aldicrab's inhibition of cholinesterase, an important enzyme in the nervous system. Furthermore, although manufacturers may voluntarily suspend sales of a pesticide for use on a particular crop, all of the existing crops that have been treated with the pesticide are still in the pipeline for sale to and consumption by the U.S. public.

This legislation will ensure that EPA can remove dangerous pesticides from the market as soon as data indicates that it poses a risk to public health. In addition, the legislation provides for the periodic expiration of pesticide registrations and tolerances which will force the pesticide industry and EPA to ensure that the determination of the safety of a pesticide is based upon the most state-of-the-art scientific data.

The Pesticide Health and Safety Act will improve the quality of information that appears on labels for pesticide products. For example, at our hearings on lawn care products it was revealed that some labels state that the applicator should wear protective clothing, while they bear pictures of individuals applying these products, wearing shorts and short sleeves and no gloves. Our bill would bar such misleading labels. Furthermore, current labels on pesticides do not necessarily include statements regarding the potential health effects of the product. I think consumers have a right to know about the potential or suspected health effects of the products they are using. Therefore, the bill will require that all known human health and environmental risks be disclosed on the label.

This way, the consumer will be able to make informed decisions regarding the choice and use of pesticide products to which they will be exposing themselves, their children, and their pets.

There is a wide degree of variation of diets among different population groups. It follows that the degree of consumption of products that have been treated with pesticides also varies among the population. For example, children consume a much higher quantity of fruits and vegetables than do adults. Therefore, the Pesticide Health and Safety Act will require that EPA examine the effects of a pesticide on children and other sensitive or heavily exposed populations before it is registered or reregistered, rather than base its risk assessments on a value that represent the mean consumption, across the country, of a product.

EPA currently establishes tolerance levels as if the American public was exposed to a single pesticide on a single piece of fruit or vegetable when, in fact, a sample 1-day diet may contain over 50 different pesticides. This legislation would require EPA to look at the total nondietary and dietary exposure to pesticides—in our air, in our soil, in our water, in all the fruits and vegetables, in our milk and in our meat, poultry and fish. I find it ironic that some well-known scientists have been urging the public to include more fruits and vegetables in their diet in order to reduce the chance of getting cancer, when the chemicals that are intentionally applied to the same fruits and vegetables may produce cancer themselves. EPA needs to evaluate the cumulative effects of these chemicals on human health.

The Pesticides Health and Safety Act requires all pesticide applicators to keep records of the data and time of pesticide applications and requires certified applicators to receive training in integrated pest management and sustainable agriculture. In addition, the bill provides much needed changes in the composition of the Agency's scientific advisory panel [SAP]. In studying the Alar case, I was surprised to learn that no member of the SAP was a pediatrician or a scientist trained in public health, even though the SAP was making crucial recommendations affecting our health and the health of our children. I was also disturbed to learn that some members of the SAP consulted for the chemical industry before and during their service on the panel. The legislation we are introducing today requires that a pediatrician and a public health specialist be members of the SAP, that all nominees be required to publicly disclose previous consulting activities, and that all members of the panel be barred from consulting for any company with an interest in pesticides while on the panel.

Senator REID, Senator DURENBERGER, and I look forward to working with our colleagues in the Senate to help move this legislation forward to ensure that the health of American citizens, especially children, is adequately protected.

I request unanimous consent that the bill and the section-by-section description of the bill be printed in their entirety immediately following my remarks and those of Senator REID.

Mr. REID. Mr. President, I am pleased to join my distinguished colleagues, Senators JOE LIEBERMAN and DAVE DURENBERGER, in introducing the Pesticide Health and Safety Act of 1991.

The Pesticide Health and Safety Act of 1991 is almost identical to a bill that we introduced in the last Congress following several months of inquiry into the pesticide regulatory process by the Subcommittee on Toxic Substances, Environmental Oversight, Research and Development of the Environment and Public Works Committee, which I chair.

There are thousands of chemicals in our environment that are inadequately regulated and that pose significant dangers to our health and safety. The legislation we're introducing will allow greater control of the regulatory process, which will increase safety and health standards.

Fears about the use of the growth regulator Alar in apples and apple products prompted my subcommittee to examine the complicated area of food safety regulation. The subcommittee conducted a hearing in May 1989 to review the regulation of Alar, the pesticide regulatory process in general, and the potential acute and chronic neurotoxic effects of exposure to pesticides.

Following the hearing the subcommittee issued a report entitled "Government Regulation of Pesticides in Food: The Need for Administrative and Regulatory Reform." The report outlines the shortcomings in the pesticide regulatory process and sets forth recommendations for improvement. Many of the provisions in the bill that we are introducing today are an outgrowth of the recommendations in the subcommittee report.

Concern about food safety has become a catalyst to the reform of regulations governing the use of pesticides on food. Our Nation's reliance on pesticide products is well known. There are reportedly 50,000 agricultural chemicals used in America today. Approximately 1.2 billion pounds of pesticides costing $65 billion are sold each year, almost 5 pounds of pesticides for every man, woman, and child in this country.

Before a pesticide can be sold, it must be registered with the Environmental Protection Agency. Unfortunately, many pesticides were registered a long time ago and have not undergone modern testing for adverse health effects. Because of increased concerns about such pesticides, Congress in the 1988 amendments to the Federal Insecticide, Fungicide and Rodenticide Act [FIFRA] required EPA to reregister these products.

Unfortunately this process has been very slow. Just last month, the General Accounting Office reported to the subcommittee that EPA had fallen behind its own April 1990 schedule for reregistration of 32 pesticides commonly used for lawn care. The GAO found that only 1 of the 32 pesticides had been completely assessed and that no products containing this pesticide have yet been reregistered. Most alarmingly, the GAO found that the Agency's data collection activities for 7 of the 32 pesticides will not even be finished before the pesticides had been scheduled to be reregistered. This group of pesticides includes 2,4-D, an herbicide which EPA has been considering placing in special review since 1986 because of concerns about possible cancer risks.

Should concerns arise about the safety of a pesticide, it is often difficult to remove that product from the market. The history of Alar demonstrates the inability of EPA to act swiftly and effectively under the present law.

Evidence that Alar caused cancer in animals was discovered in 1977. In 1980 EPA took steps to begin a special review to consider the benefits and risks not considered at the time of the product's original registration. In 1985, EPA announced its intention to cancel all food use registrations of Alar. The Agency then referred the matter to its scientific advisory panel for review. Following closed door meetings, the SAP disagreed with EPA's assessment, believing additional tests were necessary. Alar was thus allowed to stay on the market, pending additional information from its manufacturer.

It was not until January 1989 that EPA announced that it would initiate proceedings to cancel Alar—12 years after the chemical's safety was first questioned. My subcommittee was told in 1989 that cancellation proceedings could take as long as 3 or 4 years. We found this unacceptable and introduced legislation to ban Alar. Subsequent negotiations with EPA resulted in the voluntary withdrawal of Alar from the domestic market.

The bill that we are offering today addresses many of the deficiencies the subcommittee identified in the pesticide regulatory process. Specifically, the Pesticide Health and Safety Act of 1991 would:

Make it easier for EPA to remove a pesticide from the market by revising the standards for cancellation and suspension of a pesticide registration;

Establish a "sunset" provision, requiring periodic expiration of pesticide registrations and allowing reregistration only upon a determination that pesticides comply with regulatory standards in effect at that time;

Require EPA to consider health risks to children and other sensitive population subgroups;

Require the Agency to consider the cumulative effects of pesticides on food; and

Require the scientific advisory panel to include at a minimum one public health specialist and one pediatrician.

With this legislation, we can solve a major problem and send a hopeful message to American families. If you're a parent and worried that your kids are eating food that's been poisoned by chemicals, this legislation is good news indeed. Our kids have been routinely victimized by inefficient regulations. This bill will put an end to this pattern of neglect.

Mr. President, the changes to the Federal Insecticide, Fungicide and Rodenticide Act set forth in the bill that we are proposing will significantly reduce the risks to public health from pesticide exposure. I urge my colleagues to support the Pesticide Health and Safety Act of 1991.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1353

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Pesticide Health and Safety Act of 1991".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the removal of carcinogenic pesticides from the market may take 18 years from the date of the first finding of carcinogenicity;

(2) the time-consuming process and the years of indecision can be harmful to all participants, the manufacturers, the agricultural producers, and the consumers;

(3) delays in decisionmaking and the inability of the Environmental Protection Agency to remove dangerous products from the market may expose children to hazardous chemicals at critical periods in their development; and

(4) the 18 years or more that it has taken the Environmental Protection Agency to act on Alar and on Ethylene Bisdithiocarbamates (EBDCs) is a clear indication that the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) must be amended.

(b) PURPOSE.—It is the purpose of this Act to provide for the effective control of pests and the protection of human health and the environment.

SEC. 3. DEFINITIONS.

Section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136) is amended—

(1) in subsection (e)—

(A) in the first sentence of paragraph (1), by striking "which is classified for restricted use";

(B) in paragraph (2), by striking "pesticide which is classified for restricted use for purposes of producing any agricultural commodity" and inserting "registered pesticide for purposes of producing any agricultural commodity that the producer offers for sale or trade";

(C) in paragraph (3), by striking "pesticide which is classified for restricted use" and inserting "registered pesticide"; and

(D) in paragraph (4), by striking "available if and when" and all that follows through the period and inserting "physically present at the time and place the pesticide is applied. If the pesticide being applied is classified for restricted use or for prescription use, the pesticide shall only be applied by a certified applicator.";

(2) in subsection (j), by striking "and man" and inserting "people, especially population subgroups understood to be either more heavily exposed or more sensitive, or both";

(3) in subsection (n)(1), by striking "active ingredient, and the total percentage of all inert ingredients," and inserting "ingredient";

(4) in subsection (q)(1)—

(A) in subparagraph (E)—

(i) by inserting "(i)" after the subparagraph designation;

(ii) by adding at the end the following new clauses:

"(ii) all warnings, caution statements, directions for use and statements of a practical treatment required under this subsection are not displayed in a size that is uniform on a particular label; or

"(iii) the label or labeling is misleading to the ordinary individual with regard to the known safety and toxicity under customary conditions of purchase and use;";

(B) in subparagraph (F)—

(i) by inserting "(i)" after the subparagraph designation;

(ii) by inserting "human" after "protect";

(iii) by adding at the end the following new clause:

"(ii) the label or labeling contains or supplies a visual depiction, and the depiction is misleading or is not wholly consistent with the accompanying directions for use;";

(C) by striking subparagraph (G) and inserting the following new subparagraph:

"(G)(i) the label does not contain a warning or caution statement that may be necessary and if complied with, together with any requirements imposed under section 3(d), is adequate to protect human health and the environment;

"(ii) the required warning or caution statement does not include all known human health and environmental risks;

"(iii) the required warning or caution statement is not accompanied by a list of uses known to be dangerous to human health and the environment;

"(iv) the label or labeling contains or supplies a visual depiction, and the depiction is misleading or is not wholly consistent with the accompanying warning or caution statement;

"(v)(I) it contains a chemical that the Administrator has determined is a probable human carcinogen, and the label does not so state;

"(II) it contains a chemical that the Administrator has determined is a possible human carcinogen, and the label does not so state; or

"(III) it contains a chemical that has been determined to be a probable or possible human carcinogen by a Federal agency or entity other than the Administrator, and the label does not so state; or

"(IV) it contains a chemical that may cause unusual reactions in some people, and the label does not so state;";

(D) by striking the period at the end of subparagraph (H) and inserting "; or"; and

(E) by adding at the end the following new subparagraph:

"(I) the label or labeling contains a statement to the effect that it or its ingredients are registered with the Administrator, unless the statement is followed immediately by the most recent date of registration and by the further statement that: 'EPA registration is not a guarantee of safety. It is a product registration process and is not a safety determination.'"; and

(5) in subsection (bb)—

(A) by striking "to man" and inserting "to people, children,"; and

(B) by striking "the economic" and inserting "particular economic".

SEC. 4. REGISTRATION.

Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a) is amended—

(1) in subsection (a), by inserting "or on human health" after "on the environment";

(2) in subsection (c)(2)(A), by adding at the end the following new sentence: "The Administrator shall publish standards for the neurotoxic information required to support the registration of a pesticide product within 1 year of the date of enactment of this sentence."; and

(3) in subsection (c)(5)—

(A) in subparagraph (C)—

(i) by inserting before the semicolon at the end the following: ", on the health of children, or on the public health taking into consideration regional, ethnic, and other circumstances that may increase risk to certain population groups";

(ii) by striking "and" at the end;

(B) in subparagraph (D)—

(i) by striking "generally";

(ii) by inserting before the period at the end the following: ", on the health of children, or on the public health taking into consideration regional, ethnic, and other circumstances that may increase risk to certain population groups";

(iii) by striking the period at the end and inserting "; and";

(C) by inserting after subparagraph (D) the following new subparagraph:

"(E) it does not contain inert ingredients identified by the Administrator as List 1 (inerts of toxicological concern) or List 2 (potentially toxic inerts, with high priority for testing)."; and

(D) by inserting before "The Administrator" the following new sentences: "The Administrator shall publish in the Federal Register guidelines for calculating the benefits of a pesticide. In calculating benefits, the Administrator shall consider whether the denial of the registration will cause major disruptions in the nutritional balance of children or adults or otherwise adversely affect the quality or safety of the national food supply.".

SEC. 5. REREGISTRATION.

Section 4(k)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a-1(k)(2)) is amended by striking "reregistration and expedited processing of similar applications." and inserting "reregistration, expedited processing of similar applications, research on the neurotoxic effects of pesticide products, and other research considered necessary by the Administrator.".

SEC. 6. CANCELLATION.

Subsection (b) of section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136d(b)) is amended to read as follows:

"(b) CANCELLATION.—

"(1) STANDARD FOR CANCELLATION.—The Administrator shall cancel the registration of a pesticide if the Administrator determines that—

"(A) there are prudent concerns that the pesticide causes unreasonable adverse effects on the environment or on human health

when used in accordance with its labeling or in accordance with actual practice; or

"(B) the pesticide product or its labeling or other material required to be submitted by this Act do not comply with the requirements of this Act.

The proponents of the registration of a pesticide shall at all times have the burden of showing that the standard for cancellation is not met.

"(2) PROPOSED CANCELLATION ORDER.—

"(A) If the Administrator determines that the standard for cancellation may be met, the Administrator shall initiate a cancellation proceeding by issuing a proposed cancellation order.

"(B) If the proposed cancellation is based on a concern that the pesticide may pose a risk to human health or the environment, the Administrator shall review scientific information prior to issuing a proposed cancellation order.

"(C) The Administrator shall base the cancellation decision on actual exposure data, except that if the data is not available, the Administrator shall base the decision on the best available theoretical or estimated risk of exposure.

"(D) The Administrator shall send a copy of the proposed order to each registrant holding a registration addressed by the proposed order and shall publish the proposed order in the Federal Register. The proposed cancellation order shall include (or incorporate by reference to publicly available documents) the following:

"(i) A statement of the factual and legal bases for the proposed cancellation action.

"(ii) If the pesticide is used to produce an agricultural commodity, a general analysis of the impact of the proposed action on the production of major agricultural commodities and on the prices and availability of foods necessary to ensure a proper nutritional balance for an individual (hereafter in this subsection referred to as 'vital retail foods') to determine whether the proposed action will severely disrupt the domestic availability and affordability of a major agricultural commodity. The analysis shall not consider regional variations in production, but shall examine the national availability of the commodity.

"(iii) An analysis of the available substitute chemical and nonchemical pesticides and of the alternative agricultural techniques available to minimize the risks associated with the use of the chemical pest control techniques.

"(iv) If the pesticide product is used on more than one agricultural commodity, a review of the cumulative effects of the pesticide product on human health and the environment.

"(v) The changes, if any, in the terms and conditions of registration that a registrant would need to make in order for the Administrator to conclude that cancellation would not be appropriate.

"(3) REVIEW OF PROPOSED CANCELLATION ORDERS, DENIALS OF APPLICATIONS FOR REGISTRATION, OR PROPOSED CHANGES IN CLASSIFICATION.—

"(A) The registrant or applicant for registration, and any other interested person, shall have an opportunity to comment on a proposed cancellation order, denial of application for registration, or proposed change in classification, for at least 60 days after the publication of the proposal in the Federal Register.

"(B) The Administrator shall send a copy of the proposed cancellation order to the Secretary of Agriculture and the Scientific Advisory Panel established under section 25(d). Unless the Secretary and Panel waive the opportunity to comment, the Administrator shall allow at least 60 days from their receipt of the proposed cancellation order to submit written comments on the proposed order.

"(C) All comments submitted pursuant to this paragraph shall be considered advisory in nature. The Administrator shall issue the final determination on the basis of the standard set forth in paragraph (1)(A).

"(D) No final cancellation order may be issued under paragraph (4) until after the comment period.

"(4) FINAL ORDERS.—

"(A)(i) If no comments opposing the proposed action are submitted by a registrant or other interested person during the comment period provided pursuant to paragraph (3), and if, in the case of a cancellation proceeding, a registrant does not notify the Administrator that the registrant has made the changes, if any, specified in the proposed cancellation order pursuant to paragraph (2)(D)(v), the Administrator may issue a summary final order canceling registration, denying application for registration, or changing classification.

"(ii) The final order shall be published in the Federal Register and sent to each registrant of, or applicant for, a registration addressed by the final order.

"(iii) The final order shall not be subject to judicial review.

"(B)(i) If, after reviewing comments submitted pursuant to paragraph (3), the Administrator determines that the standard for cancellation of registration, denial of application for registration, or change in classification is met, the Administrator shall publish a final order of cancellation, denial of application, or change in classification in the Federal Register and shall send a copy of the order to each applicant for, or registrant holding, a registration addressed by the final order.

"(ii) The final order shall include (or incorporate by reference to publicly available documents) the following—

"(I) the factual and legal bases for the final order;

"(II) a summary of the major comments submitted by the public and, in the case of a cancellation proceeding, submitted by the Secretary of Agriculture and the Scientific Advisory Panel established under section 25(d), and the responses of the Administrator to the comments;

"(III) in the case of a cancellation proceeding involving a pesticide used in the production of an agricultural commodity, an analysis of the impact of the proposed action on the production of major agricultural commodities and on the prices and availability of vital retail foods to determine whether the proposed action will severely disrupt the domestic availability and affordability of a major agricultural commodity;

"(IV) an analysis of the available substitute chemical and nonchemical pesticides and of the alternative agricultural techniques available to minimize the risks associated with the use of the pesticide;

"(V) if the pesticide product is used on more than one agricultural commodity, a review of the cumulative effects on the use of the pesticide product on human health and the environment; and

"(VI) in the case of a cancellation proceeding, a description of the changes, if any, in the terms and conditions of registration of a pesticide product that the registrant would need to make in order for the final cancellation order not to apply to the product.

"(iii) A final order issued pursuant to this subparagraph shall be effective on the date of the publication of the final order in the Federal Register, except that in the case of a cancellation order with respect to which the Administrator has established terms and conditions as an alternative to cancellation pursuant to clause (ii)(IV), the order shall not be effective until 30 days after the publication of the order in the Federal Register, and a product will not be canceled pursuant to the order if a registrant, within the 30-day time period, has applied to amend its registration to comply with the specified terms and conditions.

"(C) All cancellation proceedings shall be concluded not later than 2 years after the publication of the proposed cancellation order in the Federal Register. If the Administrator fails to conclude the proceeding, the Administrator shall publish in the Federal Register a notice showing good cause why the proceedings have not been completed.

"(D) On the issuance of the final cancellation order, the tolerance established for the pesticide under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) shall be revoked. The Secretary of Health and Human Services may issue regulations to account for unavoidable residual environmental contamination in existence after the revocation of the tolerance.

"(E) If, after receiving the comments submitted pursuant to paragraph (3), the Administrator determines not to cancel, deny application, or change classification, the Administrator shall publish in the Federal Register a final decision to that effect and shall send a copy of the order to each registrant of, and applicant for, a registration addressed by the proposed order. The decision shall include the factual and legal basis for the determination of the Administrator, and shall include a summary of the comments submitted concerning the proposed order and the responses of the Administrator to the comments. The decision shall be effective upon publication.

"(5) JUDICIAL REVIEW.—

"(A) Notwithstanding any other provision of this Act, judicial review of the final order, or final decision not to issue an order, issued pursuant to subparagraph (B) or (C) of paragraph (4) shall be made available to any person who is adversely affected by the order or decision in the United States Court of Appeals for the District of Columbia Circuit or for any other Circuit in which the petitioner for review resides.

"(B) Requests for review shall be filed in an appropriate Court of Appeals not later than 60 days after the publication of the final order or decision in the Federal Register.

"(C) Judicial review shall be based on the administrative record compiled by the Administrator concerning the proposed cancellation, denial, or change in classification.

"(D) The final order or decision shall be sustained on review unless the action is determined to be arbitrary, capricious, an abuse of discretion, or not in accordance with law.

"(6) PETITIONS TO SUSPEND, CANCEL, DENY APPLICATION, OR CHANGE CLASSIFICATION.—

"(A) Any person may, at any time, petition the Administrator to suspend or cancel a registration pursuant to this section or to deny an application for registration or change the classification of a pesticide pursuant to section 3. The petition shall include the factual and legal bases supporting the petition.

"(B) If the Administrator determines that the requested action is necessary to serve

the purposes of this Act, the Administrator shall suspend the pesticide or issue a proposed order to cancel, deny application, or change classification, and the appropriate provisions of this section and section 3 shall apply.

"(C)(i) If the Administrator denies the petition, the Administrator shall specify the basis for the denial.

"(ii) The petitioner may thereafter seek judicial review of the denial of the petition in the United States Court of Appeals for the District of Columbia Circuit or for any other Circuit in which the petitioner resides. Requests for review shall be filed in an appropriate Court of Appeals within 60 days after receipt of the denial of the petition.

"(iii) Judicial review shall be based on the administrative record developed during the course of consideration of the petition.

"(iv) The order denying the petition shall be sustained on review unless the action is determined to be arbitrary, capricious, an abuse of discretion, or not in accordance with law.

"(7) EFFECT OF FINAL ORDER OF CANCELLATION, DENIAL OF APPLICATION, OR CHANGE IN CLASSIFICATION.—

"(A)(i) The Administrator may issue an order summarily denying any application for registration or amendment under section 3 or 24, or application for exemption pursuant to section 18, with respect to a pesticide that has been subject to a final order issued pursuant to this section canceling registration, denying application for registration, or changing classification, unless the applicant has presented substantial new evidence that—

"(I) may materially affect the basis for or content of the prior order;

"(II) was not available to the Administrator at the time the Administrator issued the final order; and

"(III) could not, through the exercise of due diligence, have been discovered prior to the issuance of the final order.

"(ii) If the Administrator determines that the applicant has not provided substantial new evidence complying with the requirements of this subparagraph, the Administrator may issue an order summarily denying the application and shall send a copy of the order to the applicant.

"(B)(i) The applicant may thereafter seek judicial review of the order summarily denying the application in the United States Court of Appeals for the District of Columbia Circuit or for any other Circuit in which the applicant resides. Requests for review shall be requested in an appropriate Court of Appeals within 60 days after the receipt of the denial of application.

"(ii) An order denying an application under this subparagraph shall be sustained on review unless the order is determined to be arbitrary, capricious, an abuse of discretion, or not in accordance with law.

"(C) If, after review of an application (and supporting data submitted by the applicant) for a registration or amendment pursuant to section 3 or 24, the Administrator determines that the applicant has submitted substantial new evidence and that reconsideration of the prior final order may be warranted, the Administrator shall publish a notice in the Federal Register announcing that the Administrator is reconsidering the prior final order. The notice shall describe the nature of the application, contain the factual and legal bases for the determination of the Administrator that reconsideration may be warranted, and shall provide an opportunity of at least 60 days for interested persons to comment on the issues of whether reconsideration should be granted and whether the application should be granted.

"(D) After the opportunity for comment on a notice issued pursuant to subparagraph (C) has expired, the Administrator shall publish a final decision in the Federal Register either denying the application or granting reconsideration of the prior final order to the extent necessary to consider the application. A final decision granting reconsideration may, at the discretion of the Administrator, contain a final determination granting or rejecting the application. If such a final determination is not contained in a final decision granting reconsideration, the application shall be reviewed according to section 3 or 24, as appropriate.

"(E)(i) If the Administrator issues a final decision pursuant to subparagraph (D) denying reconsideration of a prior final order, the applicant may petition for judicial review of any such denial in the United States Court of Appeals for the District of Columbia Circuit, or the Court of Appeals for any other Circuit in which the petitioner resides, within 60 days after the publication of the notice in the Federal Register. Judicial review shall be based on the administrative record compiled by the Administrator concerning the application. The final decision shall be sustained on review unless the action is determined to be arbitrary, capricious, an abuse of discretion, or not in accordance with law.

"(ii) If the Administrator grants reconsideration, but denies the application, the Administrator shall publish in the Federal Register a notice proposing denial of registration pursuant to section 3(c)(6). Such a notice may be contained in a final decision granting reconsideration issued pursuant to subparagraph (D). Subsequent action on the proposed denial shall be in accord with the applicable provisions of this subsection.

"(iii) If the Administrator determines, after granting reconsideration, that the application should be granted, the Administrator shall publish in the Federal Register a notice granting the application. Such a notice may be contained in a final decision granting reconsideration issued pursuant to subparagraph (D). Any person who is adversely affected by the granting of the application may petition for judicial review of the determination of the Administrator to grant the application in the United States Court of Appeals for the District of Columbia Circuit, or the Court of Appeals for any other Circuit in which the petitioner resides, within 60 days after the notice granting the application is published in the Federal Register. Judicial review shall be based on the administrative record compiled by the Administrator concerning the application. The grant of the application shall be sustained on review unless the action is determined to be arbitrary, capricious, an abuse of discretion, or not in accordance with law.

"(8) AUTHORITY TO ISSUE REGULATIONS.—Nothing in this subsection shall be construed as limiting in any way the authority of the Administrator to issue regulations pursuant to section 25, including regulations requiring the adoption or modification of specific terms and conditions of registrations issued pursuant to this Act.

"(9) PRESCRIPTION USE CLASSIFICATION.—

"(A) If the Administrator determines that a pesticide cannot be canceled pursuant to the criteria described in section 6(b)(2) and the Administrator has prudent concerns that the pesticide poses a particular risk to the health of any population subgroup or to the environment, the Administrator shall publish in the Federal Register a regulation reclassifying the pesticide, or the particular use or uses to which the determination applies, for prescription use only.

"(B) The prescription use classification described in subparagraph (A) shall, on the label, require that a certified pest control expert, pursuant to regulations promulgated by the Administrator, inspect the setting in which the pesticide is to be applied in order to—

"(i) document the presence of the target pest;

"(ii) determine that no cultural or biological option is available;

"(iii) confirm that no general or restricted use pesticide is registered for use on the target pest that could be expected to bring about a comparable degree of control; and

"(iv) specify the timing, rate, and conditions of the use of the pesticide, and maintain a record of the evaluation and prescription to be provided, on request, to Federal and State officials.

"(C) Any such reclassification shall be reviewable in the appropriate Court of Appeals upon petition of a person adversely affected filed within 60 days of the publication of the regulation in final form. The final decision of the Administrator shall be sustained on review unless the action is determined to be arbitrary, capricious, an abuse of discretion, or not in accordance with the law.".

SEC. 7. SUSPENSION.

Subsection (c) of section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136d(c)) is amended to read as follows:

"(c) SUSPENSION.—

"(1) ORDER.—

"(A) If the Administrator determines that the use of a pesticide may cause significant adverse effects to human health or the environment, the Administrator may issue an order immediately suspending the registration of a pesticide.

"(B) The Administrator shall send to the registrant by certified mail a copy of the suspension order, and shall publish the order in the Federal Register.

"(C) The order shall become effective either on the publication of the order in the Federal Register or on the receipt by the registrant of the order, whichever occurs first.

"(D) The suspension shall expire 180 days after becoming effective unless, on or before the expiration date, the Administrator publishes in the Federal Register a proposed cancellation order that would cancel the registration of the pesticide use suspended by the order issued under this subsection. If a proposed cancellation order is issued prior to the expiration date, the suspension shall continue in effect until terminated in accordance with paragraph (3).

"(2) EXISTING STOCKS.—

"(A) The Administrator may allow continued sale or use of existing stocks of a suspended pesticide if the Administrator makes a specific finding that the use will not cause significant adverse effects to human health or the environment.

"(B) If the Administrator determines that existing stocks may continue to be sold, the stocks shall bear a label stating that production of the pesticide has been suspended because of concerns about adverse health and environmental effects.

"(C) If the Administrator determines that existing stocks may no longer be sold, the manufacturer shall accept return of the pesticide and provide reimbursement to the purchaser.

"(3) DURATION OF SUSPENSION.—

"(A) A suspension issued under this subsection may be terminated by the Administrator at any time.

"(B) A suspension order issued under this subsection shall terminate on completion of a proceeding to cancel the registration of the pesticide under subsection (b), or on cancellation by the Administrator of the suspended registration.

"(C) If the cancellation by the Administrator of the suspended registration is reversed by a reviewing court, the suspension order issued under this section shall be reinstated.

"(4) JUDICIAL REVIEW.—

"(A) Any suspension order entered by the Administrator pursuant to this subsection shall be subject to review in an action by the registrant, or by any other adversely affected person in an appropriate district court, solely to determine whether the order of suspension was arbitrary, capricious, or an abuse of discretion, or whether the order was issued in accordance with the procedures established by law.

"(B) No such action shall be entertained by a district court unless the action is filed within 20 days of publication of the order in the Federal Register.

"(C) The effect of any order of the district court shall be to stay the effectiveness of the suspension order, pending the final determination of the Administrator with respect to cancellation. The commencement of a proceeding under this paragraph shall not operate as a stay of the suspension order unless otherwise ordered by the court.".

SEC. 8. EXPIRATION OF REGISTRATIONS.

Subsection (d) of section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136d(d)) is amended to read as follows:

"(d) EXPIRATION OF REGISTRATIONS.—

"(1) DURATION OF REGISTRATIONS.—Notwithstanding any other condition imposed on the registration of a pesticide product, the registration of a pesticide product that has not been canceled or has not otherwise expired shall expire in accordance with this subsection.

"(2) PRE-1984 PESTICIDES.—

"(A) In the case of a pesticide product containing an active ingredient that was contained in a pesticide first registered before November 1, 1984, the registration shall expire on the later of—

"(i) 19 years after the date on which the active ingredient was first registered; or

"(ii) 9 years after the date on which the Administrator determines, pursuant to section 4(g)(2)(A), that the pesticide products containing the active ingredient are eligible for reregistration.

"(B) Thereafter, the registration of any product containing the active ingredient shall expire every 9 years after the date on which registrations for pesticide products containing that active ingredient had most recently expired.

"(3) POST-1984 PESTICIDES.—

"(A) In the case of a pesticide product containing an active ingredient that was contained in a pesticide first registered after October 31, 1984, the registration shall expire 15 years after the date on which the active ingredient was first registered.

"(B) Thereafter, the registration of any product containing the active ingredient shall expire every 9 years after the date on which registrations for pesticide products containing that active ingredient had most recently expired.

"(4) PESTICIDES CONTAINING MORE THAN ONE ACTIVE INGREDIENT.—

"(A) Notwithstanding paragraphs (2) and (3), the registration of a pesticide product containing more than one active ingredient shall expire at such time as the Administrator determines, except that no registration shall expire sooner than the later of—

"(i) 15 years after the date on which the earliest registration was granted for an active ingredient in the formulation; or

"(ii) 9 years after the date on which the Administrator determines, pursuant to section 4(g)(2)(A), that pesticides containing one of the active ingredients in the product are eligible for reregistration.

"(B) Thereafter, the registration of any product containing more than one active ingredient shall expire every 9 years after the date on which the registration had most recently expired.

"(5) NOTIFICATION.—The Administrator shall publish in the Federal Register the dates on which the registrations of pesticide products shall initially expire.

"(6) EXPIRATION OF TOLERANCE.—The tolerance of a pesticide product under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) shall expire concurrently with its registration. The Secretary of Health and Human Services may, on application by the registrant, continue the tolerance for not more than 2 years to ensure that agricultural products already in the stream of commerce are allowed to be sold. In order for the pesticide product to be reregistered, the tolerance level shall be reset.

"(7) SALE, DISTRIBUTION, AND USE OF EXISTING STOCKS.—

"(A)(i) Except as provided under clause (ii) and subparagraph (B), if the registration of a pesticide product has expired pursuant to this section, existing stocks of the pesticide may be sold and distributed for 1 year after the date on which the registration of the product expired, unless the Administrator determines that additional sale and distribution is inappropriate.

"(ii) The registrant may not sell and distribute more product than the average quantity sold and distributed by the registrant annually during the last 3 full calendar years prior to the expiration of the registration.

"(iii) Any sale, distribution, and use of existing stocks permitted by this section shall be subject to the limitations, terms, and conditions applicable to the sale, distribution, and use of the product prior to its cancellation.

"(B) The Administrator may prohibit or establish such additional limitations and conditions as are necessary to fulfill the purposes of this Act on the sale and distribution or the sale, distribution, and use of a pesticide product the registration of which has expired pursuant to this section, if the Administrator determines that use of the pesticide may cause unreasonable adverse effects on the environment or on human health.

"(8) APPLICATION.—Notwithstanding any other provision of law, the filing of an application for renewal of the registration of a pesticide product shall not extend the registration past the date on which the registration expires unless—

"(A) in the case of a registrant that would not qualify for the exemption in section 3(c)(2)(D) with respect to one of the active ingredients in its product—

"(i) the registrant has submitted an application for renewal of its registration at least a year before the expiration date; and

"(ii) the Administrator has not issued a notice pursuant to section 3(c)(6) proposing to deny the application; or

"(B) in the case of a registrant that would qualify for the exemption in section 3(c)(2)(D) with respect to all of the active ingredients in its product—

"(i) the registrant has submitted an application for renewal of its registration at least 6 months before the date on which the registration is scheduled to expire; and

"(ii) the Administrator has not issued a notice pursuant to section 3(c)(6) proposing to deny the application.

When a timely application for renewal of a registration is filed pursuant to this paragraph, the expiration date for the registration shall be considered to be the date the Administrator either grants the application for renewal or issues a notice pursuant to section (3)(c)(6) proposing to deny the application.

"(9) CONTENTS OF APPLICATIONS FOR RENEWAL.—The Administrator may issue regulations establishing requirements for the contents of applications for renewal. In the regulations, the Administrator shall require applications for renewal to comply with the same requirements as are in effect at the time for initial applications for registration.

"(10) DENIAL OF APPLICATIONS FOR RENEWAL.—

"(A) The Administrator shall issue a notice of denial pursuant to section 3(c)(6) if—

"(i) a timely application for renewal was not received;

"(ii) an application for renewal does not comply with the requirements for registration;

"(iii) by the end of the time periods prescribed by paragraph (8), an agreement for delivery of information needed for renewal, including a schedule for delivery, has not been entered into; or

"(iv) the registrant has not made a good faith effort to adhere to conditions in subparagraph (C).

"(B) If the Administrator determines that an application for renewal does not comply with the requirements for registration, the Administrator may issue a notice pursuant to section 3(c)(6) proposing to deny the application, except that if the Administrator determines that an applicant for renewal has made a good faith effort to comply with the requirements for registration, the Administrator shall not issue a notice pursuant to section 3(c)(6) until the Administrator has provided the applicant for registration a reasonable period of time to make the necessary corrections to complete the application.

"(C) The Administrator shall not issue a notice of denial of application for renewal of registration before notifying the Secretary of Agriculture of the intent of the Administrator to issue such a notice and the reasons therefor, and providing the Secretary of Agriculture with an opportunity to provide comments to the Administrator on the proposed denial.

"(11) PUBLICATION.—Not later than 90 days after any registration of a pesticide product expires pursuant to this subsection, the Administrator shall—

"(A) notify the registrant of the expiration and the conditions, if any, under which the existing stocks may be sold, distributed, and used; and

"(B) publish a notice in the Federal Register listing each pesticide product, the registration of which has expired, and the conditions, if any, under which the existing stocks of the product may be sold, distributed, and used.".

SEC. 9. RECORDKEEPING.

Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136f) is amended to read as follows:

"**SEC. 8. RECORDS.**

"(a) AUTHORITY TO REQUIRE RECORDS.—The Administrator may require any producer, importer, or exporter of a pesticide, registrant, applicant for registration, applicant for or holder of an experimental use permit, pesticide testing facility, or any holder of a pesticide that is the subject of a regulation or order issued under section 19(b)—

"(1) to prepare, and to maintain for reasonable periods of time, such records as the Administrator determines to be necessary for the effective implementation or enforcement of this Act;

"(2) to furnish to the Administrator reports stating the location where the records are maintained; and

"(3) to furnish a copy of any such records to the Administrator on written request.

"(b) RECORDS OF APPLICATORS.—

"(1) COMMERCIAL APPLICATORS.—The Administrator shall require each commercial applicator to maintain, and may require a commercial applicator to file with the Administrator, records of each pesticide application, including the identity and quantity of pesticide applied and the date and location of the application.

"(2) PRIVATE APPLICATORS.—The Administrator shall require private applicators to maintain, and may require a private applicator to file with the Administrator, records of each pesticide application, including the identity and quantity of pesticide applied and the date and location of the application.

"(c) RECORDS OF PESTICIDE DEALERS.—

"(1) IN GENERAL.—The Administrator shall require each pesticide dealer to maintain a record of each sale or distribution of all registered pesticides.

"(2) CONTENTS.—The records shall include the identity of the pesticide sold or distributed, the identity of the person to whom the pesticide was distributed or sold, the date of the distribution or sale, and the quantity of the pesticide distributed or sold.

"(3) DURATION.—A pesticide dealer shall maintain the records required under this subsection for as long as required by the Administrator.

"(4) DEFINITION.—As used in this section, the term 'pesticide dealer' means any person who, in the ordinary course of business, distributes, or sells any registered pesticide.

"(d) LIMITATIONS.—The Administrator shall not, under the authority of subsection (a) or (b), require any person to maintain records of—

"(1) financial data, pricing data, or sales data other than shipment data;

"(2) personnel data, except for data concerning exposure of employees of pesticides or ingredients of pesticides, or concerning health effects on employees that could reasonably be attributable to the exposure; or

"(3) research or test data other than—

"(A) data relating to a registered pesticide;

"(B) data relating to any pesticide for which an application for registration or for an experimental use permit has been filed;

"(C) data relating to any pesticide for which an exemption pursuant to section 18 has been requested;

"(D) data relating to any pesticide for which a regulation has been promulgated pursuant to section 3(a);

"(E) data relating to testing a pesticide testing facility; or

"(F) data relating to the storage or disposal of a pesticide whose registration has been suspended or canceled.".

SEC. 10. CERTIFIED APPLICATORS.

Section 11 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136i) is amended—

(1) in subsection (a)(1)—

(A) in the second sentence, by striking "and shall not" and all that follows through "pesticides";

(B) in the sixth sentence, by striking "sale, offering for sale" and all that follows through "commercial application" and inserting "private application, sale, offering for sale, holding for sale, or distribution of any registered pesticides to maintain the records and submit the reports concerning the application";

(C) in the eighth sentence, by inserting before the period at the end the following: ", except that certification shall not apply to the application of chemicals for the purpose of cleaning, sanitizing, or disinfecting"; and

(D) by striking the ninth and tenth sentences and inserting the following new sentence: "The standards shall also provide that to be certified an individual shall be shown to be competent with respect to integrated pest management practices, including the ecological principles underlying sustainable and economical pest control methods.";

(2) in subsection (c), by striking "provisions for making" and all that follows through the end of the subsection, and inserting "instruction concerning integrated pest management techniques, including the ecological principles underlying sustainable and economical pest control methods."; and

(3) in subsection (e), by striking "shall" and inserting "may".

SEC. 11. AUTHORITY OF ADMINISTRATOR.

Section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136w) is amended—

(1) by inserting after the 10th sentence the following new sentence: "The panel membership shall always include a pediatrician and a scientist trained in public health.";

(2) by inserting after the 15th sentence (as it existed before the amendments made by this section) the following new sentences: "The Administrator shall require information on the previous employment and consulting activities of each nominee. The information shall be available to the public."; and

(3) by inserting after the 17th sentence (as it existed before the amendments made by this section) the following new sentence: "No member of the panel shall be permitted to consult for or receive any direct or indirect payment or any other benefit from any company with an interest in pesticide products during the member's term on the panel.".

SEC. 12. TABLE OF CONTENTS.

The table of contents in section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. prec. 121) is amended—

(1) by striking the items relating to subsections (b), (c), and (d) of section 6 and inserting the following new items:

"(b) Cancellation.
"(1) Standard for cancellation.
"(2) Proposed cancellation order.
"(3) Review of proposed cancellation orders, denials of applications for registration, or proposed changes in classification.
"(4) Final orders.
"(5) Judicial review.
"(6) Petitions to suspend, cancel, deny application, or change classification.
"(7) Effect of final order of cancellation, denial of application, or change in classification.
"(8) Authority to issue regulations.
"(9) Prescription use classification.
"(c) Suspension.
"(1) Order.
"(2) Existing stocks.
"(3) Duration of suspension.
"(4) Judicial review.
"(d) Expiration of registrations.
"(1) Duration of registrations.
"(2) Pre-1984 pesticides.
"(3) Post-1984 pesticides.
"(4) Pesticides containing more than one active ingredient.
"(5) Notification.
"(6) Expiration of tolerance.
"(7) Sale, distribution, and use of existing stocks.
"(8) Application.
"(9) Contents of applications for renewal.
"(10) Denial of applications for renewal.
"(11) Publication.";

and

(2) by striking the items relating to section 8 and inserting the following new items:

"Sec. 8. Records.
"(a) Authority to require records.
"(b) Records of applicators.
"(1) Commercial applicators.
"(2) Private applicators.
"(c) Records of pesticide dealers.
"(1) In general.
"(2) Contents.
"(3) Duration.
"(4) Definition.
"(d) Limitations.".●

THE PESTICIDE HEALTH AND SAFETY ACT OF 1991

SECTION-BY-SECTION

Sec. 1—Short Title. This Act is called the "Pesticide Health and Safety Act of 1991."

Sec. 2—Findings. Congress finds that the removal of dangerous pesticides from the market often involves significant delays and is not sufficiently protective of human health and the environment.

Sec. 3—Definitions. Expands the definition of certified and private applicators to cover those who use all registered pesticides. Expands the term "environment" to specifically cover population subgroups understood to be more heavily exposed and/or more sensitive to pesticides. Requires additional information on safety and toxicity on the label. Bars misleading statements and pictures regarding safety and proper use.

Sec. 4—Registration. Amends the registration provisions of FIFRA to ensure that a pesticide's effects on the health of children and other population subgroups are specifically reviewed prior to registration. Requires that the Environmental Protection Agency (EPA) establish specific standards for the review of a pesticide's neurotoxic effects prior to registration.

Sec. 5—Certified Applicators. Certification standards must provide that a certified applicator is proficient in integrated pest management and sustainable pest control methods.

Sec. 6—Cancellation. The cancellation standard is revised to enable the EPA Administrator to cancel a pesticide when there are prudent concerns that the pesticide causes unreasonable adverse effects on human health or the environment. The registration has the burden of showing that the standard for cancellation has not been met. Under current law a pesticide can only be cancelled when the Administrator determines that it generally causes unreasonable adverse effects on the environment.

In determining whether to cancel a pesticide, the Administrator must review the

impact of the cancellation on the price and availability of vital retail foods, analyze the available substitute chemical and nonchemical pest control methods and alternative agriculture techniques, and, if the pesticide is used on more than one commodity, review its cumulative effect on human health and the environment.

All cancellation proceedings must be concluded in 2 years.

If the Administrator determines that cancellation is not proper pursuant to this section, but has prudent concerns about particular risks of a pesticide, the Administrator may reclassify one or more uses of the pesticides as a prescription use. Under a prescription use classification the pesticide can only be used after a certified applicator has determined that the target pest is present and that other pest control techniques are not viable.

Sec. 7—Suspension. The suspension standard is revised to enable the Administrator to suspend a pesticide upon a determination that use of the pesticide may cause significant adverse effects to human health or the environment. Under current law the Administrator can only suspend a pesticide if it presents an "imminent hazard".

Sec. 8—Sunset Provision. All pesticide registrations and tolerances will expire every nine years. They will be reregistered upon a determination that they comply with the standards for registration at the time their registration expires. No provision of current law has been interpreted by the EPA as requiring the expiration of all pesticide registrations.

The already-established fees collected in conjunction with reregistration shall also be available to the Administrator to conduct research on the neurotoxic effects of pesticide products and other research deemed necessary.

Sec. 9—Record Keeping. The Administrator shall require commercial and private applicators to keep records of pesticide applications and shall require pesticide dealers to maintain records of sales and distributions of pesticides.

Sec. 10—Scientific Advisory Panel. The membership of the panel shall include a pediatrician and a scientist trained in public health. The Administrator shall require each nominee to provide information on previous employment and consulting activities and this information shall be made available to the public. No member of the panel shall be permitted to consult or receive any direct or indirect benefit from a company with any interest in pesticide products while serving on the panel. Current law does not contain any restrictions on consulting by members of the Scientific Advisory Panel.

By Mr. HARKIN:

S. 1354. A bill to amend title II of the Social Security Act to increase the amount of remuneration an election official or worker may receive and be excluded from an agreement between a State and the Secretary providing for the extension of benefits under such title to State employees; to the Committee on Finance.

ELECTION WORKERS SOCIAL SECURITY EXEMPTION

• Mr. HARKIN. Mr. President, I am introducing a bill to raise the exemption from Social Security withholdings on wages earned by election workers from $100 to $1,000. This may seem to be a small change, Mr. President, but for the fact that such an alteration will have surprisingly broad-based implications nationwide.

In 1990, Congress amended the Social Security Act. Among the changes made was the requirement that poll watchers are now required to pay Social Security taxes on earnings in amounts exceeding $100. This inconspicuous provision of the law, Mr. President, has created an administrative nightmare. Not only are poll watchers, many of whom are elderly citizens living on fixed incomes, forced to sacrifice a portion of their meager earnings, election commissioners from all over the country are paying the price as well.

In my own State of Iowa, Sandy Steinbach, commissioner of elections, estimates the paperwork cost, alone, of this provision exceeds $309,000 statewide. For example, Tom Slockett, Johnson County, IA, commissioner of elections reports that because of the new law, the county must issue every poll watcher two checks, one for salary from which FICA is withheld and one for mileage traveled for which the county compensates its election workers—and Iowa is a relatively small State. This is not to mention the increased difficulty counties may face in recruiting poll watchers. Sue Wold, deputy commissioner of elections in Linn County, IA, reports that 100 of all 676 precinct election officials in the county requested their names be removed from the election employee rolls when informed that Social Security taxes would be withheld from their checks.

Poll watchers usually work only about 3 days a year in Iowa. The paperwork for meeting the Social Security requirements of withholding in this case is not worth the gain. The $1,000 limit would exempt virtually all election workers without affecting more permanent employees. This change in the exemption, therefore, makes absolute sense. Please join me in supporting this small but important change in the law.

Ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1354

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE IN AMOUNT OF REMUNERATION ALLOWED ELECTION OFFICIALS OR WORKERS TO BE EXCLUDED UNDER AN AGREEMENT BETWEEN A STATE AND THE SECRETARY UNDER TITLE II.

(a) IN GENERAL.—Section 218(c)(8) of the Social Security Act (42 U.S.C. 418(c)(8)) is amended by striking "100" and inserting "1000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with regard to services performed on or after October 1, 1991.•

By Mr. SIMON:

S. 1355. A bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to authorize funds received by States and units of local government to be expended to improve the quality and availability of DNA records; to authorize the establishment of a DNA identification index; and for other purposes; to the Committee on the Judiciary.

DNA IDENTIFICATION ACT

• Mr. SIMON. Mr. President, I rise today to introduce legislation to encourage the use and data banking of forensic DNA fingerprints.

DNA is the basic genetic material that gives every individual in the world a distinct identity. DNA fingerprinting is a scientific test which can analyze blood, hair, saliva, semen, or skin left at the scene of a crime to determine if it matches samples provided by a defendant or suspect. These tests, when properly performed and analyzed, are considered nearly foolproof. They are a powerful new crime-fighting tool that may conclusively implicate or exonerate an individual accused or suspected of a crime.

In 1989, I held the first ever congressional hearings on DNA tests. The testimony received at that hearing convinced me of the scientific soundness of these tests and their undeniable crime-fighting potential. DNA fingerprinting has been hailed as the most important technological breakthrough in law enforcement since the inception of conventional fingerprinting. I have strongly supported the FBI's efforts to advance the use of this technology in State and local crime laboratories.

DNA fingerprinting is beginning to have a significant impact on criminal prosecutions by enhancing the ability of U.S. attorneys and local prosecutors to obtain convictions. To date DNA test results have been accepted into evidence in criminal trials in 38 States.

But the Office of Technology Assessment, in an August 1990 report on forensic uses of DNA tests, concluded that standards are essential to the performance of high-quality forensic DNA analysis. The OTA report also concluded "setting standards for forensic DNA analysis is the most urgent policy issue and needs to be resolved without further delay."

I agree. Standards will ensure that forensic DNA laboratories are performing high-quality work and will give guidance to the courts and others in judging the reliability of individual test results. It will also pave the way to creation of a DNA data bank accessible to State and local criminal justice agencies nationwide—a vital step in assuring that this technology achieves its full crime-fighting potential.

On June 13, I cochaired a joint hearing of the Senate Subcommittee on the Constitution and the House Sub-

committee on Civil and Constitutional Rights on the issue of forensic DNA tests and the need for standards. The legislation I rise to introduce is informed by testimony received in the hearing. The bill fosters the adoption of forensic DNA testing standards and encourages the proliferation of this important technology while addressing the legitimate privacy considerations involved with its use.

In furtherence of that goal, the DNA Identification Act of 1991 directs the National Institute on Standards and Technology [NIST] to appoint a permanent advisory board, including forensic scientists, to develop standards for testing the proficiency of forensic laboratories in conducting DNA analysis. In turn the FBI would be charged with reviewing these recommendations and publishing standards. Laboratories that meet or exceed the published standards may be approved by the National Institute of Standards and Technology. The bill authorizes appropriations to the FBI and the National Institute of Standards and Technology to carry out these goals.

Mr. President, as violent crime increasingly pervades our society, we must aggressively pursue all avenues to see that those who commit these crimes are expeditiously apprehended, prosecuted, and convicted. I believe that working together, the law enforcement and scientific communities can ensure the integrity and increased acceptance of forensic DNA tests. The DNA Identification Act will further this effort.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1355

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "DNA Identification Act of 1991".

SEC. 2. FUNDING TO IMPROVE THE QUALITY AND AVAILABILITY OF DNA ANALYSES FOR LAW ENFORCEMENT IDENTIFICATION PURPOSES.

Section 501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751(b)) is amended—

(1) in paragraph (20) by striking "and" at the end,

(2) in paragraph (21) by striking the period at the end and inserting "; and", and

(3) by adding at the end the following:

"(22) developing or improving in a forensic laboratory a capability to analyze DNA for identification purposes if each State or unit of local government that performs DNA analyses with any part of a grant made under this subsection certifies to the Director that—

"(A) DNA analyses performed at such laboratory will satisfy or exceed then current standards for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation after taking into consideration the recommended standards developed by the advisory board on DNA forensic analysis methods established under section 3(a) of the DNA Identification Act of 1991;

"(B) DNA samples obtained by, and DNA analyses performed at, such laboratory will be accessible only—

"(i) to criminal justice agencies for law enforcement identification purposes;

"(ii) to the record subject for criminal defense purposes; and

"(iii) if personally identifiable information is removed, for a population statistics database or for quality control purposes;

"(C)(i) each analyst performing DNA analyses at such laboratory will undergo, at regular intervals of not to exceed 180 days, external proficiency testing by a DNA proficiency testing program approved under section 3(b) of the DNA Identification Act of 1991; and

"(ii) the results of each test performed to comply with clause (i) will be made available to the public without charge; and

"(D) the population studies relied on by such laboratory are publicly available.".

SEC. 3. PROFICIENCY TESTING PROGRAMS.

(a) PUBLICATION OF STANDARDS.—(a) Not later than 180 days after the date of the enactment of this Act and for purposes of subsection (b), the Director of the National Institute of Standards and Technology shall appoint an advisory board on DNA forensic analysis methods which shall develop, and periodically monitor, recommended standards for testing the proficiency of forensic analysts in conducting analyses of DNA. The advisory board shall include as members molecular geneticists, population geneticists, forensic scientists, experts in law, and experts in privacy.

(2) The Director of the Federal Bureau of Investigation, after taking into consideration such recommended standards, shall issue (and revise from time to time) standards for testing the proficiency of forensic laboratories in conducting analyses of DNA.

(3) The standards described in paragraphs (1) and (2) shall specify criteria for proficiency tests to be applied to each procedure used by forensic laboratories to conduct analyses of DNA. The standards shall also include a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

(b) APPROVAL OF PROFICIENCY TESTING PROGRAMS.—The Director of the National Institute of Standards and Technology shall approve a DNA proficiency testing program, if such program satisfies the then current standards in effect under subsection (a).

(c) PRIVACY STANDARDS.—The advisory board on DNA forensic analysis methods shall develop recommended privacy standard for the protection of DNA samples and analyses.

(d) PERMANENT NATURE OF THE ADVISORY BOARD.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the advisory board appointed under subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the National Institute of Standards and Technology, in addition to any other amounts specified in appropriations Acts, such sums as may be necessary for carrying out the purposes of this section.

SEC. 4. INDEX TO FACILITATE LAW ENFORCEMENT EXCHANGE OF DNA IDENTIFICATION INFORMATION.

Section 534 of title 28, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e);

(2) by inserting after subsection (c) the following:

"(d) The Attorney General may, under the authority of subsection (a) of this section, establish an index of DNA identification records of persons convicted of crimes punishable by more than one year's imprisonment. Such index may include only information on DNA identification records that are—

"(1) based on analyses performed in accordance with publicly available standards that satisfy or exceed the guidelines for the quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under the DNA Identification Act of 1991;

"(2) prepared by laboratories whose DNA analysts undergo, at regular intervals of not to exceed 180 days, external proficiency testing by a DNA proficiency testing program approved under section 3(b) of the DNA Identification Act of 1991; and

"(3) maintained by Federal, State and local criminal justice agencies pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only—

"(A) to criminal justice agencies for law enforcement identification purposes;

"(B) to the record subject for criminal defense purposes; or

"(C) if personally identifiable information is removed, to governmental agencies for a population statistics database, or for quality control purposes"; and

(3) by inserting ", or, in the case of DNA identification records exchange, if the quality control and privacy requirements described in subsection (d) of this section are not met" before the period at the end of subsection (b).

SEC. 5. FEDERAL BUREAU OF INVESTIGATION.

(a) PROFICIENCY TESTING REQUIREMENTS.—

(1) GENERALLY.—Personnel at the Federal Bureau of Investigation who perform DNA analyses shall undergo, at regular intervals and not to exceed 180 days, external proficiency testing by a DNA proficiency testing program approved under section 3(b).

(2) REPORT.—The Director of the Federal Bureau of Investigation shall submit to the Committees on the Judiciary of the House and Senate an annual report on the results of each of the tests referred to in paragraph (1).

(b) PRIVACY PROTECTION STANDARDS.—

(1) GENERALLY.—Except as provided in paragraph (2), the results of DNA tests performed for a Federal law enforcement agency may be disclosed only to—

(A) criminal justice agencies for law enforcement identification purposes; and

(B) the record subject for criminal defense purposes.

(2) EXCEPTION.—If personally identifiable information is removed, test results may be disclosed to a population statistics database or for quality control purposes.

(c) CRIMINAL PENALTY.—Whoever—

(1) by virtue of employment or official position, has possession of, or access to, DNA information; and

(2) willfully discloses such information in any manner to any person or agency not entitled to receive it shall be fined not more than $100,000.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Federal Bureau of Investigation, in addition to any other amounts specified in appropriations Acts, such sums as may be necessary for carrying out the purposes of this Act.●

ADDITIONAL COSPONSORS

S. 284

At the request of Mr. LIEBERMAN, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 284, a bill to amend the Internal Revenue Code of 1986 with respect to the tax treatment of payments under life insurance contracts for terminally ill individuals.

S. 323

At the request of Mr. CHAFEE, the name of the Senator from Maine [Mr. MITCHELL] was added as a cosponsor of S. 323, a bill to require the Secretary of Health and Human Services to ensure that pregnant women receiving assistance under title X of the Public Health Service Act are provided with information and counseling regarding their pregnancies, and for other purposes.

S. 640

At the request of Mr. KASTEN, the names of the Senator from Connecticut [Mr. DODD] and the Senator from California [Mr. SEYMOUR] were added as cosponsors of S. 640, a bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

S. 656

At the request of Mr. KASTEN, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 656, a bill to amend the Internal Revenue Code of 1986 to provide for a maximum long term capital gains rate of 15 percent and indexing of certain capital gains, and for other purposes.

S. 729

At the request of Mr. BURDICK, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 729, a bill to assist small communities in construction of facilities for the protection of the environment and human health.

S. 781

At the request of Mr. SARBANES, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 781, a bill to authorize the Indian American Forum for Political Education to establish a memorial to Mahatma Gandhi in the District of Columbia.

S. 1133

At the request of Mr. KENNEDY, the names of the Senator from Pennsylvania [Mr. WOFFORD] and the Senator from Connecticut [Mr. DODD] were added as cosponsors of S. 1133, a bill to establish a demonstration grant program to provide coordinated and comprehensive education, training, health and social services to at risk children and youth and their families, and for other purposes.

S. 1170

At the request of Mr. DURENBERGER, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 1170, a bill to require any person who is convicted of a State criminal offense against a victim who is a minor to register a current address with local law enforcement officials of the State for 10 years after release from prison, parole, or supervision.

S. 1240

At the request of Mr. CHAFEE, the names of the Senator from North Dakota [Mr. BURDICK] and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 1240, a bill to amend title XIX of the Social Security Act to provide criteria for making determinations of denial of payment to States under such Act.

S. 1332

At the request of Mr. GRASSLEY, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 1332, a bill to amend title XVIII of the Social Security Act to provide relief to physicians with respect to excessive regulations under the Medicare Program.

SENATE JOINT RESOLUTION 61

At the request of Mr. FORD, the names of the Senator from California [Mr. CRANSTON], the Senator from Hawaii [Mr. INOUYE], the Senator from West Virginia [Mr. ROCKEFELLER], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of Senate Joint Resolution 61, a joint resolution to designate June 1, 1992 as "Kentucky Bicentennial Day."

SENATE JOINT RESOLUTION 74

At the request of Mr. LIEBERMAN, the names of the Senator from California [Mr. SEYMOUR], the Senator from Arkansas [Mr. BUMPERS], and the Senator from Oregon [Mr. PACKWOOD] were added as cosponsors of Senate Joint Resolution 74, a joint resolution designating the week beginning July 21, 1991, as "Lyme Disease Awareness Week."

SENATE JOINT RESOLUTION 78

At the request of Mr. BENTSEN, the names of the Senator from Kansas [Mrs. KASSEBAUM], the Senator from New Jersey [Mr. BRADLEY], the Senator from Wisconsin [Mr. KOHL], the Senator from Delaware [Mr. ROTH], the Senator from South Dakota [Mr. PRESSLER], the Senator from Nevada [Mr. BRYAN], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Mississippi [Mr. LOTT], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Kansas [Mr. DOLE], the Senator from Arkansas [Mr. BUMPERS], the Senator from Alaska [Mr. STEVENS], and the Senator from Nebraska [Mr. EXON] were added as cosponsors of Senate Joint Resolution 78, a joint resolution to designate the month of November 1991 and 1992 as "National Hospice Month."

SENATE JOINT RESOLUTION 125

At the request of Mr. SIMON, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of Senate Joint Resolution 125, a joint resolution to designate October 1991 as "Polish American Heritage Month."

SENATE JOINT RESOLUTION 142

At the request of Mr. SHELBY, the names of the Senator from Pennsylvania [Mr. SPECTER] and the Senator from Pennsylvania [Mr. WOFFORD] were added as cosponsors of Senate Joint Resolution 142, a joint resolution to designate the week beginning July 28, 1991, as "National Juvenile Arthritis Awareness Week."

SENATE JOINT RESOLUTION 147

At the request of Mr. LEAHY, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of Senate Joint Resolution 147, a joint resolution designating October 16, 1991 and October 16, 1992, as "World Food Day."

SENATE CONCURRENT RESOLUTION 35

At the request of Mr. GLENN, the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Illinois [Mr. SIMON], the Senator from Colorado [Mr. WIRTH], the Senator from Hawaii [Mr. AKAKA], the Senator from North Dakota [Mr. BURDICK], the Senator from Georgia [Mr. NUNN], and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of Senate Concurrent Resolution 35, a concurrent resolution expressing the sense of the Congress that the awarding of contracts for the rebuilding of Kuwait should reflect the extent of military and economic support offered by the United States in the liberation of Kuwait.

SENATE RESOLUTON 123

At the request of Mr. KASTEN, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of Senate Resolution 123, a resolution relating to State taxes for mail order companies mailing across State borders.

AMENDMENTS SUBMITTED

VIOLENT CRIME CONTROL ACT

THURMOND AMENDMENT NO. 368

Mr. THURMOND proposed an amendment to the bill (S. 1241) to control and reduce violent crime, as follows:

Strike section 2301 and insert in lieu thereof the following:

SEC. . ADMISSIBILITY OF CERTAIN EVIDENCE.

(a) IN GENERAL.—Chapter 223 of title 18, Untied States Code, is amended by adding at the end the following:

"§ 3509. Admissibility of evidence obtained by search or seizure

"(a) EVIDENCE OBTAINED BY OBJECTIVELY REASONABLE SEARCH OR SEIZURE.—

"(1) FEDERAL PROCEEDINGS.—Evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of

the fourth amendment to the Constitution of the United States, if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment. The fact that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of the existence of such circumstances.

"(2) STATE PROCEEDINGS.—The law of the United States does not require the exclusion of evidence in a proceeding in any court under circumstances in which the evidence would be admissible in a proceeding in a court of the United States pursuant to paragraph (1) of this subsection.

NOTICES OF HEARINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. NUNN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, will hold a hearing on efforts to combat fraud and abuse in the insurance industry.

This hearing will take place on Wednesday, June 26, 1991, at 9:30 a.m., in room 342 of the Dirksen Senate Office Building. For further information, please contact Eleanore Hill of the subcommittee staff at 224-3721.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate, Thursday, June 21, 1991, at 9 a.m. to conduct a hearing on streamlining the RTC.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, and the National Ocean Policy Study, be authorized to meet during the session of the Senate, Thursday, June 21, 1991, at 9:30 a.m. on driftnets and S. 884.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

COMMENCEMENT ADDRESS OF SENATOR SAM NUNN

• Mr. LEVIN. Mr. President, thoughtful people in America are spending a great amount of time these days trying to analyze the incredibly rapid changes taking place in the Soviet Union and what steps the United States should be taking in response. We certainly have an interest in supporting radical reform in the Soviet Union in the hope that they will move rapidly toward democracy and free markets.

One of the most thoughtful of these analysts is our colleague, the distinguished Senator from Georgia, Senator SAM NUNN. His recent commencement speech at the National Defense University is typical of his analytical prowess. It is worthy of wide consideration and I ask that it be printed in the RECORD.

The address follows:

COMMENCEMENT ADDRESS OF SENATOR SAM NUNN AT GRADUATION CEREMONIES OF THE NATIONAL DEFENSE UNIVERSITY, FORT MCNAIR, DISTRICT OF COLUMBIA, JUNE 19, 1991

Thank you very much Admiral Baldwin for your kind introductory remarks. I am delighted to be here with the graduates of the combined classes of the National War College and the Industrial College of the Armed Forces, as well as your families and the friends of the National Defense University. I know that the participation of the international fellows and civilian professionals has enriched the course of instruction, and that personal friendships have developed here that transcend institutional and national boundaries.

This is a very special occasion for each member of the graduating class as you complete your formal military education at the pinnacle of professional military education here at the National Defense University.

I congratulate each member of the graduating class, and your families. I have a keen appreciation for the many hardships that a military career brings both to the service members and to their families. Our freedom depends upon your many hours of training, planning, and peacetime operations, often conducted at great personal sacrifice and separation from families and loved ones.

Professional military education allows you to put aside the intense pressures of your normal military duties and to reflect on the larger international security picture. Your careers thus far and your graduation from this prestigious university indicate that there are a lot of future generals and admirals in this class.

Seeing all these present and future generals and admirals reminds me of the evening in 1951 when Ambassador Joseph Grew was paying tribute to General George Marshall on his retirement from the position of Secretary of State. Among the head table guests were General and Mrs. Dwight D. Eisenhower. In closing, Ambassador Grew said: "General Marshall has had a distinguished military and civilian record. He has been wartime Chief of Staff of the Army, Secretary of State, and Secretary of Defense. There is no honor within their command that the American people would not give this man. But he refuses any further honors. All he wants to do is to go down to his beautiful farm in Virginia and spend the rest of his days with Mrs. Eisenhower." As the laughter subsided and the humiliated ambassador took his seat, he scribbled a note to Mrs. Eisenhower that said: "My apologies to the general." Mrs. Eisenhower quickly passed the note back after writing at the bottom: Which general? The ambassador failed to make the transition between generals.

As each of you in this class moves to your next assignment you will do so in a period of great transition. As the Persian Gulf war demonstrated, we have now seen a revolutionary change in conventional warfare.

America is proud of the performance of our Armed Forces in Operation Desert Storm. We must make sure that we learn the correct lessons from this conflict.

Our Senate Armed Services Committee has received a number of briefing from the men and women, officer and enlisted, who actually fought the war. Based on those briefings, I have a few preliminary observations:

First, a strategy of reinforcement worked. No other country in the world could have moved as many personnel and as much equipment halfway around the world and across the desert of Saudi Arabia as quickly as we did. We must be cognizant, however, that we had considerable help from our allies and we had a superb logistical infrastructure available to us in Saudia Arabia and the Gulf States. We need to continue our investment in airlift and sealift, and we also need to emphasize prudent prepositioning.

Second, there is no substitute for tough, realistic training to prepare our troops for combat. As I heard Admiral Rickover say on several different occasions—the more you sweat in peace, the less you bleed in war. Our investment in realistic training at the Army's National Training Center, the Marine Corps' 29 Palms, the Navy's Top Gun Training, and the Air Force's Red Flag Exercises is a critical component of our military capability.

Third, the defense reforms enacted in the Goldwater-Nichols legislation paid big dividends. As General Schwarzkopf said "The Goldwater-Nichols Act * * * effectively brought the forces from all our services under one clear chain of command."

Fourth, our investment in defense technology has paid off. The performance of stealth, electronic warfare, precision guided munitions, night vision devices, AWACS and JSTARS was a major contributor to the effort.

But the most critical factor and the essential ingredient that assured success was the high-quality, dedicated, and motivated men and women in the military services. We have heard countless stories of ingenuity, initiative, and individual heroism during our briefings.

There are also areas in which we need to improve.

We need better capability to collect and deliver intelligence to tactical units on the move. We also need better interoperability among the various intelligence systems of the services.

We need better air to ground identification of friend or foe to prevent casualties from friendly fire.

We need better mine sweeping and clearing capability both on land and at sea.

We need to provide better night fighting capability for the Marine Corps.

And, as I mentioned, we need greater airlift and sealift capability.

In learning lessons from the war, however, we have to be conscious of the many unique elements that were involved and be careful not to overlearn or draw conclusions that may not be applicable to a world in transition. As Vaslav Havel, the former playwright and human rights prisoner, now President of Czechoslovakia, recently observed, events have moved so rapidly we have literally no time even to be astonished.

The crumbled Berlin Wall and the re-emerging sovereignty of Eastern Europe are a tribute to the men and women of our Armed Forces who over the past forty years have paid the price, sometimes the ultimate price, in defending freedom and preserving our institutions and values. Whether in

Korea or Vietnam or on lonely deployments in other remote points on the globe, you and your predecessors displayed the determination and resolve that convinced our potential enemies of our staying power and determination to defend freedom.

The threat environment has changed dramatically in the past few years. The prime source of the threat, the Soviet Union itself, is undergoing revolutionary change. While its leadership talks about domestic reform, the country's economy is deteriorating rapidly, republics are demanding sovereignty or full independence, and sporadic strikes and ethnic violence erupt around the country.

We must not forget, however, that the Soviet Union remains a powerful nation in terms of military capability. It still possesses a huge nuclear arsenal. It also possesses significant naval and air forces capable of projection far beyond Soviet borders.

Our relationship to a changing Soviet Union is fundamental to our security and to our future defense requirements. One merely has to consider how different Operation Desert Storm might have been if Iraq's invasion of Kuwait had occurred during the period of U.S.-Soviet confrontation. The Soviet Union's cooperation at the United Nations allowed the imposition of international sanctions and the Security Council's authorization to use force. Moreover, the improved security situation in central Europe allowed us to redeploy forces from Europe to the Persian Gulf, forces that were essential to our decisive military victory.

Our previous policy frameworks for U.S.-Soviet relations were clearly formulated, and they were successful.

Our policy framework of the World War II period was clear: Cooperation with the Soviet Union in a military alliance against Hitler's aggression.

The policy framework of the cold war period was equally clear: Containment of ruthless Soviet expansionism conducted by Stalin and his successors.

We must now design and construct a new framework that will serve our national interests equally well in the new historical setting of the 1990's. This graduating class will make significant contributions in shaping this framework as it evolves in the months and years to come.

To stimulate your thinking, let me suggest a few guiding principles for U.S.-Soviet relations during a period of historic Soviet transition:

It is in the vital interests of the entire international community to see that the Soviet Union becomes a non-threatening member of the world community instead of an international renegade or a source of domestic chaos that inadvertantly sparks international instability.

It is also in the interests of the international community for the Soviet Union to reduce its threatening military posture, develop a market economy and move to a pluralistic, decentralized democratic system and greater respect for human rights.

I must quickly add, however, that apart from humanitarian assistance, substantial sums of direct aid to today's Soviet Union would be like pouring money into a cosmic black hole. Unless the Soviet leadership and the Soviet people undertake basic economic reforms thus far missing—including private ownership, realistic pricing, currency convertability, and a market economy—large-scale western economic aid will be wasted.

The Gorbachev reform effort to date brings to mind the old analogy with the British. It is as if the British, after all these years, finally concluded they had been driving on the wrong side of the road and decided to do something about it. After numerous committee meetings, they decided not to make the switch all at once but to change gradually, starting first with trucks. I think that is about the way the Soviets have handled their economic reform.

It follows that any aid beyond essential humanitarian assistance must be conditioned on basic economic change in the USSR. I do not believe, however, that it is in America's long-term interest to impose or be perceived as imposing detailed economic conditions or plans on the Soviet Union.

For example, state subsidies for food, housing, health and transportation permeate the everyday life of the Soviet people. These subsidies must be cut severely, a process very unpopular in any country, including our own. Such painful but necessary stipulations should not be insisted upon by the United States.

I believe that any conditional economic assistance should be carried out on a multinational basis, drawing on the experience of such organizations as the International Monetary Fund and the World Bank.

The West must not neglect Eastern Europe. The most relevant example for the people of the Soviet Union and for their leaders will be the success or failure of Eastern European countries that have undertaken tough economic reform, including Poland, Czechoslovakia, and Hungary.

The bilateral component of the new framework should focus on those specific areas in which the United States can play a unique role, and which are clearly in our interests as well as those of the Soviet Union. I would suggest as the centerpiece U.S. cooperation in Soviet efforts to convert military production to civilian uses.

Military conversion is pivotal to the success of Soviet economic reform for several reasons:

The Soviet economy of today was built by Stalin as a pyramid, with the military-industrial complex occupying the top one-third and receiving the best human and material resources—to the severe detriment of the non-military sectors occupying the bottom two-thirds. With the economy on the verge of total breakdown, it is clear that the Stalinist pyramid has to be reconfigured.

In addition to President Gorbachev, virtually all the democratic reformers, including Boris Yeltsin, most of the centrists, and the growing numbers of leaders within the military-industrial complex itself now recognize this necessity and are struggling to find a way to do it successfully.

Conversely, growing unemployment in the defense sector will lead military-industrial traditionalists to vigorously oppose needed economic reform. During a recent visit to Leningrad—or should I say Saint Petersburg—I was told that some 45,000 defense-related workers presently are unemployed in that city alone.

The USSR has a well educated work force, proven scientific and technical talent, and vast natural resources. Soviet leaders can help their people by re-channeling the considerable riches their country currently possesses but wastes in a military establishment that consumes at least 25% of the country's gross national product.

At the same time, measured cooperation on military conversion is also in our national security interests.

If done properly, it will reduce Soviet military production capabilities.

In addition, the Soviet military-industrial complex has for decades been an isolated stronghold of the Stalinist approach to domestic and foreign policy. Cooperation on military conversion will expose this traditionally closed sector of Soviet society to the thinking and experience of American counterparts in the public and private sectors.

As central as military conversion is to Soviet interests and to ours, it will require imagination and flexibility on both sides. Most importantly, it will require American private sector investment. Red tape will have to be minimized, so that the investment climate becomes much more hospitable.

If the Soviet Union encourages American firms to explore and extract vast Soviet reserves of gas and oil, for example, the revenues could help fund private investment in joint ventures on military conversion.

One aspect of military conversion particularly appropriate for U.S.-Soviet joint ventures would be the clean-up of nuclear, chemical and other pollutants and wastes produced by the cold war. It seems fitting that the two superpowers, after years of confrontation, should now begin a pattern of cooperation to clean up the cold war.

Let me underscore that our cooperation must be premised on the reduction of Soviet military capabilities. Moreover, our cooperation in this area must reinforce rather than impede the growing economic and political sovereignty of the republics vis a vis the central government.

If this new policy framework can be constructed successfully, it can accelerate the transition of the Soviet Union to an economic system that serves the interests of its own people, and to a national security policy in which the Soviet defense establishment is proportionate to the country's legitimate defense requirements. What a change this would be.

June 19, 1991 is a day of transition for each of you in this class during a period of great change for our nation and the world.

It has been said about change that:

To the fearful it is threatening because it may mean that things will get worse.

To the hopeful it is encouraging because it may mean that things ~~will~~ get better.

To the confident it is inspiring because the challenge exists to make things better.

Because of leaders like you in this graduating class, America does not fear change. We face the future with hope and confidence—we put our faith in you.

Thank you.•

LETTER FROM CONNIE PRICE, MALAD, ID

• Mr. SYMMS. Mr. President, America is crying out for help, but we do not seem to hear the cry very often. Well, I heard Connie Price, and I rise to share with my colleagues the cry of this person who calls herself a "confused American."

Connie and her husband live in the small town of Malad, ID, where they run the Malad Drive In. Connie calls it "the neatest little fast-food" restaurant in Idaho. Quality is everything to Connie and her husband, and they cook food the old-fashioned way. In fact, they do not buy those prepackaged frozen french fries—they still make them fresh every day from real Idaho potatoes.

It sounds like the American dream—a husband and wife owning their own business, raising a family, living in a friendly community. Well, it was the American dream until somebody got in their way.

That somebody is us—Congress!

We made Connie and her husband raise their wages for 14-year-old carhops from $2.75 an hour to $3.00 an hour. Then, we told them that was not enough—so now they have to pay $4.25 an hour. And all the while, Congress keeps heaping more FICA, income, payroll, unemployment, and capital gains taxes on them and all the other small businesses of America.

Connie wrote me and asked why she and her husband work so hard. Why should they work from 4:30 a.m. to 11 p.m. every day, when they could sit back and do nothing and collect welfare?

I know the answer to that question. They are working so hard because they know that is right—that is America, where hard work is the way to realize your dreams.

Connie ends her letter by asking, begging for support for small business people. Connie, I hear you and I say to you and, Mr. President, I say to all my colleagues, that it's time to cut payroll taxes, cut the capital gains tax, stop shoving minimum wage laws down the dying throats of our businesses and give people like Connie a break. These are not tax cuts for the rich, like some try to suggest—these are breaks for the mom-and-pop shops, the husband and wife shops and the small business owners across America.

Mr. President, I ask that Connie's letter be printed in the RECORD.

The letter follows:

MALAD, ID, *May 14, 1991.*

To Whom It may Concern:

My name is Connie Price. I am the proud co-owner of the neatest little fast-food drive in Idaho: The Malad Drive In. My husband and I take great pride in our little establishment! Our drive-in was established in 1955 with food cooked the old-fashioned way. My husband's mother was the previous owner; and when she wanted to retire from business, we bought the establishment from her. She had my husband train for six months to be sure he knew how to do everything (from cooking to ordering) just right. We take great pride in the quality of our food, the cleanliness of our establishment, and the friendliness of the people we hire. Even our french fries are still made daily from real potatoes! Sounds like old-fashioned Americanism, doesn't it? Well, it is—and we are very proud of it!!

In April 1990, we had to raise our minimum wage from $2.75 (for part time, 14 year old carhops) to $3.80. Okay, we complied. Then recently we were told to raise minimum wage to $4.25. Okay, we again complied. We were at first told that small businesses that grossed less than $500,000 would be exempt from this requirement, then later told the only exemption would be for agriculture. We again had to raise our prices to conform to this new law (and lost a few customers in the process), but we feel we can still remain in business. For the carhops we hire, this is always their first job. We spend most of the training time teaching them how to work—how to be on time—and how to get along with other people (co-workers as well as the public). My husband works from 4:30 a.m. to 11:00 p.m. at our drive in—seven days a week. I work at Thiokol (in Brigham City, Utah) as a secretary to help make ends meet. I leave home at 5:30 a.m. and return at 5:00 p.m. In my spare time, I do the payroll and scheduling for our drive in.

My husband and I keep asking ourselves why we do this—why we work this hard. Why not quite and go on welfare (food stamps and the whole bit) as its the new "American Way!" Why are we working ourselves to death to pay all the things small business people are required to pay: FICA, state tax, federal tax, employment tax, state unemployment tax, federal unemployment tax and so many others—and just when we feel we are getting our head above water—you again raise the minimum wage law. It seems to me that people who work to get ahead are farther behind than people who just sit back and reach out their hands. The old adage is true: "Give someone bread when he is down and he learns to reach out his hand for more—but if you put a hoe (or a pencil or a hot pad) in his or her hand you teach them to work to support themselves."

If anyone wanted to run for President of the United States and be assured of getting every vote of every working man and woman in America, all they would have to do is reform the welfare and aid programs! Teach people to care for themselves! I am not saying there should be no programs at all—but everyone could and should do what they can to help themselves—first, then we should assist. Let them have a little self-pride.

We have a nice couple in our town who have five children. They ran into a bit of bad luck (the man works at Thiokol with me) and got a few months behind in their house payment. The bank quickly took back their lovely home and put welfare people in it—a family with seven children. The bank won't have to worry about them getting behind in their payment. The government will take care of them!!! The working family are now renting and trying to save up to again buy. Why does America make it so hard on the working family and so easy on those who do nothing?

My son and his wife are a working couple with one child. They have tried many times to qualify for a home loan but make too much money to qualify for the Idaho or FHA assisted loans. Together they make $30,000. They have friends who don't work who live in a lovely home and receive a lovely welfare check. Isn't that fair? Try paying living expenses—rent, gas, heat, lights, a $4,000 hospital bill (no insurance)—and saving for a house. It's damn hard.

We have two children and they both tell us the only thing we ever did for them is teach them how to work. We were always gone working and they had to learn the rest of life for themselves! Tell me, did we do them a favor? I don't know. Isn't that sad. I really don't know. The small business people who try to make it for themselves are definitely fighting an uphill battle.

We need—ask—beg for the support of our legislature in protecting the small business people. Help us to help ourselves instead of making it so damn hard. If this new $4.25 minimum wage law does not run us out of business, can you assure us that you will fight to protect the small business people in the future, or should we all close our doors and sit back on our duffs with outstretched hands.

Sign me; A Confused American.

CONNIE PRICE,
Co-owner, Malad Drive In.●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

● Mr. HEFLIN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35 for Gaye Bennett, a member of the staff of Senator SYMMS, to participate in a program in China, sponsored by the Chinese Culture University, from July 1–6, 1991.

The committee has determined that participation by Ms. Bennett in the program in China, at the expense of the Chinese Culture University, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for Donald Hardy, a member of the staff of Senator SIMPSON, to participate in a program in Indonesia, sponsored by the Indonesian Embassy and United States-Asia Institute, from August 16–31, 1991.

The committee has determined that participation by Mr. Hardy in the program in Indonesia, at the expense of the Indonesian Embassy and United States-Asia Institute, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35 for David W. Brown, a member of the staff of Senator BAUCUS, to participate in a program in Indonesia, sponsored by the Indonesian Embassy and United States-Asia Institute, from August 16–31, 1991.

The committee has determined that participation by Mr. Brown in the program in Indonesia, at the expense of the Indonesian Embassy and United States-Asia Institute, is in the interest of the Senate and the United States.●

RETIREMENT OF WILLIAM (BILL) E. WEBER

● Mr. LUGAR Mr. President, after 27 years of outstanding service to the agricultural community, Bill Weber, a dedicated soil conservationist is retiring from the Soil Conservation Service [SCS] as an assistant State conservationist for operations after a very distinguished career. His deep concern and devotion to enhancing land and water

quality has culminated in many great accomplishments.

Bill Weber was born in Wakefield, IL. His interest in agriculture took root on his father's farm near Ingraham, IL. After completing 2 years of college Bill returned home to help his father before joining the Army in 1958. In 1961 Bill resumed his college career at the University of Illinois. Before graduating, Bill honed his soil scientist and conservationist skills as a student trainee. He graduated from the university in 1963 with a major in agronomy. In addition to earning a Bachelor of Science degree, Bill has a masters in public administration from the University of Oklahoma.

Bill began his career with SCS as a soil conservationist in Freeport, IL in 1964. Since then, he has held positions as district conservationist in Metropolis, IL and Golcanda, IL, RC&D coordinator—Shawnee RC&D area—in Carbondale, IL, area conservationist in MaComb, IL and soil conservationist—program analyst—Policy Analysis Division in Washington, DC.

In 1980 he came to Indiana as assistant State conservationist for operations. During his tenure in Indiana, Bill provided statewide leadership that has resulted in a nationally recognized, outstanding resource conservation and development program. Bill has also been an effective leader/trainer of needed dialog through many changing agency responsibilities for farm bill legislation. His understanding of actions needed and their consequences to producers has enhanced the agency's relationship with the agriculture community.

Bill has received numerous performance awards and commendation letters. In 1973, Bill received a special achievement award for controlling erosion in the southwest Indiana target area. Because of his efforts, errosion control nearly doubled from the average of the 3 previous fiscal years.

Upon his retirement, Weber and his wife will make their home in Ingraham, IL. I wish to take this opportunity to thank Bill for the assistance he has provided my staff and join with his friends at SCS in wishing him and is wife the best of luck in their future endeavors.●

A NEW DECLARATION OF INDEPENDENCE

● Mr. JEFFORDS. Mr. President, I speak today to tell you that as we approach the Fourth of July, our national birthday celebration, America is in need of a new Declaration of Independence. This great Nation needs to state loudly and clearly once again that it is, and intends to remain, independent. I must say this because, sadly, this is not the direction in which we are moving.

In the course of events of this Nation, of late, America is becoming dangerously dependent. And this goes radically against the principles upon which the Nation was founded. Those principles are of self-reliance and hard work, the essentials of independence.

Today America is becoming less independent as we become more and more reliant on foreign oil. Unless we act and act decisively, this Nation will apparently stay on that course which is, I declare, a course of national doom. At the very least, it must be stated that at our current rate, we'll not achieve energy independence until sometime after all the oil wells of Earth run dry.

Obviously, this Nation founded to be governed for the good of the many is being steered by a policy that has in mind only the good of the few. I speak, of course, of the oil companies who reap great profits from our dependence on foreign oil and who even have the temerity to profit most in times of national emergency.

Change is needed for, as I have said before, the future of an energy-dependent America is severely limited while the future of an energy-independent America knows no bounds.

The original Declaration of Independence cautioned that mankind is more disposed to suffer than to right themselves by abolishing the forms to which they are accustomed. "But when a long train of abuses and usurpations" as the original Declaration warns, presents themselves to the people, the people will act.

I tell you today that America is waking to the dangers, the frustrations, to the terrible costs, of energy dependence. Polls tell us that a huge majority of our citizens want energy independence and are willing now to pay extra for energy independence.

Americans do not want their future to be dependent on a 6,000-mile transfusion line subject to severance at any moment due to war or the whims of foreign powers. And add to the cost of the expensive oil that comes from that pipeline the untold billions on billions of dollars in military might, being spent now and earmarked for the years ahead, necessary to guarantee our supply of Mideast oil.

There is, there must be, another way. I have a way.

My program for American energy independence is something I call the Replacement and Alternative Fuels Act, or RAFA for short. And I would like here to thank my colleagues, particularly those on the Energy Committee, for their consideration of that legislation, S. 716, and for their adoption of a portion of the bill. I also thank those who opposed the measure for the time they took in consideration. But I also want to say that I am determined to go forward with this proposal.

I am determined to do what some say is impossible, but what is indeed most possible—to set America on a course toward energy independence. One of the strongest indications of its possibility came in the American Petroleum Institute's reaction to my bill. When the oil companies trot out warnings of environmental boondoggle, economic disaster, logistical nightmare, when they use that kind of language, you know you've hit on something they're taking seriously. To paraphrase Senator GORE, when the facts aren't on your side, holler. That's hollering.

The oil companies will also tell you this is an ethanol bill, or a methanol bill. No apologies, it is. It's also a tar-sands bill, an oil-shale bill, a hydrogen bill, an electric-car bill, and a coal bill, all sources of replacement or alternate fuels. And by the way, this is also a jobs bill, a balance-of-trade bill, and an environmental bill. And it's also an OPEC bill, aimed squarely by at the heart of those who would hold us hostage to oil.

There's also talk around to the effect that this plan would cost too much, some say $100 billion over 10 to 20 years. Let me pause here and put in terms we can all understand. It's not that expensive, at most an additional 5 to 10 cents per gallon, and that's one of the prime reasons they're scared. When I started working on this bill I went to the Department of Energy and asked what it might cost. The answer I got was pennies a gallon. That's right, we're just pennies a gallon from energy independence and the American people want energy independence and are willing to pay for it.

Right now, we're paying $40 billion each year in defense costs to keep the oil flowing. Add in the costs of Desert Storm, including the rise in gas prices, and you're talking $100-a-barrel oil and more.

Also consider what major positive effect the alternative and replacement fuel bill such as I propose could have on American employment—tens, even hundreds of thousands of jobs.

Then I hear talk that my bill is antifree market. Quite the opposite and certainly nothing is less free market than the OPEC cartel which charges customers 10 times the cost of production for its product. All we do is set up a free market isolated from OPEC. It thus can attract the capital necessary to feed that market.

My approach can work. It doesn't need subsidies and it doesn't raise taxes one thin dime. It creates a free market in which domestic energy producers can be free to develop domestic energy alternatives without being undercut by OPEC. It thus can attract the capital necessary to feed that market.

And is this careless, radical? It's been tried in Canada, Brazil, and South Africa and it works.

So as the Fourth of July nears I can think of no greater gift that we could

give the American people than a new gift of freedom, a new Declaration of Independence, a commitment in law of our intent to break the bonds of energy dependence.

I might also add that 1991 is the bicentennial year for my home State of Vermont and the 200th anniversary of its motto which is "Freedom and Unity." Vermonters know a lot about independence, fought hard for it more than two centuries ago, were an independent republic for a time.

I also say today that as we move toward a new declaration of freedom, we keep in mind the words "Freedom and Unity." This Nation deserves the new freedom that energy independence would give it, the freedom to realize its still vast potential. I know this Nation has the unity necessary to bring about new freedom for reliable polls tell me 85 percent of Americans want energy independence.

That is a majority any founding fathers would be delighted to have behind them in setting off on any brave new venture, be it a new nation or a new declaration of a nation's intent, such as energy independence and the vast horizon of possibility that stretches bright and shining beyond it.●

SALUTE TO ACADEMIC DECATHLON

● Mr. SEYMOUR. Mr. President, I stand today in recognition of a very special group of students and their teachers from my home State of California, who have won honors in the Academic Decathlon competition at the State and national levels.

Jay Kim, Ryan Sakamoto, Teddy Chen, Todd Faurot, George Dannenhauer, Sian Baker, Robin Cheney, and Kirk Brown are the members of the Laguna Hills High School academic decathlon team, coached by Kathy Lane and Roger Gunderson. The Orange County team won the statewide California competition in March.

The team representing Pacific Palisades High School from the Los Angeles Unified School District placed second at the State level. Its members include Amir Berjis, Ritu Batra, Matthew Gelbart, Eddy Kup, Neal Kaplan, David Elashoff, Robert Brombach, Lesley Young, Thabiti Sabahive. The team is coached by Rose Gilbert and Don Walz.

Placing first in the California contest division for smaller schools, with under 1,000 students enrolled in the 10th through 12th grades, the Del Oro High School team from Placer County included Rick Fasani, Richard Howard, Kevin Wood, Chelsea Haley, Lori Townsend, Brandon Tuttle, Surjir Gish, Andrew Luebke, and Bliane Nickerson. Jack Sanchez and Valerie Sanchez coached the team.

I am particularly pleased to note that the Orange County team placed second in the national finals held in Los Angeles in April, and among overall winners, Jay Kim won a bronze medal in the honors category and George Dannenhauser was silver medalist in the scholastic category.

The U.S. Academic Decathlon competition was born in Orange County, the brainchild of a gifted educator and former superintendent of schools, Dr. Robert Peterson. The California program originated in 1979, with over 45 counties now participating. The U.S. competition, in which 44 States now compete, began in 1981. In every national competition, a California team has placed first or second. Of course, having said that, I must also add that it is not whether you win or lose, it is how you play the game. In the case of the academic decathlon, the game is played so everyone wins, because everyone who participates learns.

The academic decathlon program is structured to motivate students, not just "A" students, but also "B" and "C" students. In 1987, the highest scoring student in the national competition was a "C" student who had been denied admission to college. Because of this affiliation with the decathlon he was admitted to the University of California Berkeley and is now a graduate of that institution.

I rise today not only to honor the students who have won this competition, and the teachers who helped guide them, but also the private sector partners in the U.S. Academic Decathlon Program. It is certainly a foremost example of the success of which American educators and businesses are capable when they join together to achieve their common goal of a better-educated society.

The decathlon's national sponsors include the Ronald McDonald Children's Charities, the Lennox Foundation, the Raytheon Co., the Northrop Corp., the Psychological Corp., a division of Harcourt Brace Jovanovich, Inc., D.C., Heath and Co., TRW, and Arthur Andersen.

In California, the sponsors include Arthur Andersen and Co., the Bank of America, Carl Karcher Enterprises, the Foundations of the Milken Families, McDonnell Douglas, the California State Lottery, GTE California, the Hoag Foundation, Pacific Bell, Price Waterhouse, Rockwell International, City National Bank, the Fashion Institute of Design & Merchandising, San Fernando Valley Links, AIM Marketing and Insurance Services Corp., ARCO Foundation, First Interstate Bank of California, Fluidmaster, Inc., the Fluor Foundation, Hughes Aircraft Co., Kinko's the Copy Store, the Security Pacific Charitable Foundation, the Southern California Edison Co., the Termo Co., and Toyota USA.

I ask the Senate to join me in saluting the Academic Decathlon Program and the students, teachers, and sponsors who participate in the program from throughout the Nation.●

HONORING NATIONAL GROCERS WEEK, JUNE 23–29, 1991

● Mr. GORTON. Mr. President, it is with great pride that I rise today to honor National Grocers Week. This week has been set aside to recognize the enormous contribution America's retail and wholesale grocers make to keep our economy viable, while providing friendly, hometown service to their customers.

Representatives from the food distribution industry will be here in Washington, DC, this week in order to participate in a "Grocer's Care" conference recognizing their support and involvement in other charitable organizations as well. They are involved in the American Cancer and Heart Associations; "A Clean America" with contributions to recycling and the environment; and "A Proud America" with grocers' civic and patriotic endeavors.

Washington State's members of the conference include Craig Cole of Brown and Cole Stores in Ferndale, John Herbison of U.R.M. Stores, Inc. in Spokane, Walter Schmidt of Walt's Fine Foods in Lakebay, Chris Brown of Wrays Thriftway in Yakima, and Wayne Spence of the Washington State Food Dealers Association.

Mr. President, these individuals and their companies deserve our recognition and our support. I am proud to pay tribute to the grocers of America during National Grocers Week.●

REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT [IDEA] FINAL PASSAGE

● Mr. DURENBERGER. Mr. President, I rise today to support S. 1106, the Individuals With Disabilities Education Act Amendments of 1991. On April 18, President Bush announced his national education strategy that would prepare this country for the 21st century. To achieve this strategy, the President, has, in conjunction with all 50 of our Nation's Governors, set forth 6 national goals. The first, and I believe the most important of these goals, is that every child in America starts school ready to learn.

Preparing all children, including children with disabilities, is a vital part of meeting this first education goal. In fact, we are already ahead of the game when it comes to every intervention services for children with disabilities thanks to the efforts Congress took 5 years ago when it established the framework for a comprehensive, statewide system of early intervention services for infants and toddlers with disabilities and their families, known as the part H program.

Dr. Robert Davilla, Assistant Secretary for Special Education and Rehabilitation Services, also acknowledged this connection, when he testified before the Disability Subcommittee, stating "We believe this program canmake a real difference in helping meet the national goal of improving the school readiness of all young children, including children with disabilities." So I am pleased, Mr. President, to have had the opportunity today, along with my colleague from Iowa and others, to join in supporting reauthorization of this program.

The miracles of this program, even in its first 5 years have been many. From the little girl, Gretchen, who testified with her family before the subcommittee to Nicole Anderson and her family in Minnesota, this program has prepared young children with disabilities not only for school, but for life.

When the program was developed in 1986, a 5-year implementation period was established to allow States time to create the type of systems and services required under this act. In reviewing this program, it became clear, that even with all its support requirements under this bill in the allotted timeframe. It became evident that the 5-year implementation period established in 1986 may not have been long enough for some States to develop the kind of comprehensive systems envisioned under this act. In addition, we found States trapped by severe budget shortfalls that could not have been foreseen in 1986.

On the other hand, we had to recognize that several States had made the tough decisions and financial commitments to implement this program, and we did not want to penalize these States in any way for doing what we asked.

The bill before us today provides both assistance to those States that are struggling to meet the deadlines under the original act to stay in the program, and added incentives to those States who are on time. It does so by creating a new system of differential funding. This change will give States up to an additional 2 years to reach full implementation.

Currently, all States have completed year 3 requirements. Some States have already made 4th-year applications. The bill before us will allow States who are not ready to make 4th-year applications to receive two 1-year extensions at which time they would continue to receive planning money set at 1989 funding levels the 1st year and 1990 levels the 2d year. In 1990, States who are on schedule applying for the 4th year will receive their share of 1990 funds, plus any reallotment from remaining moneys from States not on schedule.

In 1991 and 1992, States fully on schedule will receive their 1991 funding allocations plus up to 100 percent their previous year's allocation. States who have proceeded to the 4th year will receive their 1990 level of funding plus a reallotment of funds left over from States on schedule. States who are still unable to make 4th year requirements the 2d year will receive their 1990 funding level but will be ineligible for any reallotment.

Because States were facing an application deadline of July 1 and it was not clear that we could have passed S. 1106 by that time, we pulled this section of the bill out and attached it to the extension of the Rehabilitation Act which was signed into law, Public Law 102–52, by the President on June 6, 1991.

In addition, this legislation makes several other important changes in the part H program. The bill would eliminate the current disruption of services for children turning 3 years of age during the school year by making several changes that will provide a smooth transition between the part H program and the section 619 preschool program. The bill modifies the number of members and composition of the State interagency coordinating council, and the functions of and allowable expenditures by the council. The bill places in statute the current Federal Interagency Coordinating Council. In addition, it amends the definition of "children with disabilities" to provide States with discretion to include children experiencing developmental delays.

Finally, Mr. President, I would like to thank my colleague from Iowa for his leadership on this issue. He has been steadfast in his support for this program and for children with disabilities and their families.

Mr. President, we have seen how this program can do wonders for these young children, and I urge your support of this important legislation.●

RECORD TO REMAIN OPEN UNTIL 3 P.M.

Mr. BIDEN. Mr. President, I ask unanimous consent that the RECORD remain open today until 3 p.m. for the introduction of statements and legislation, and further, that the Senate committees may file reported legislative and Executive Calendar until 3 p.m. today.

The PRESIDENT pro tempore. Without objection, the several requests will be granted.

ORDERS FOR MONDAY, JUNE 24, 1991

Mr. BIDEN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11:30 a.m. on Monday, June 24; that following the prayer, the Journal of proceedings be deemed approved to date; that the time of the two leaders be reserved for their use later in the day; and that the Senate then resume consideration of S. 1241, the crime bill.

The PRESIDENT pro tempore. Without objection, it is so ordered.

RECESS UNTIL MONDAY, JUNE 24, 1991 AT 11:30 A.M.

Mr. BIDEN. Mr. President, if there is no further business to come before the Senate today, and I see no Senator seeking recognition, I now ask unanimous consent that the Senate stand in recess, as under the previous order, until 11:30 a.m., Monday, June 24.

There being no objection, the Senate, at 1:22 p.m., recessed until Monday, June 24, 1991, at 11:30 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate June 21, 1991:

NUCLEAR REGULATORY COMMISSION

IVAN SELIN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE TERM OF 5 YEARS EXPIRING JUNE 30, 1996.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.